

FEDERAL COURT

B E T W E E N :

CANADIAN CONSTITUTION FOUNDATION

Applicants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF MADELEINE ROSS

I, **Madeleine Ross**, of the City of Toronto, in the Province of Ontario, hereby MAKE OATH AND SAY:

1. I am an associate at Goddard & Shanmuganathan LLP where Janani Shanmuganathan is a partner. Ms. Shanmuganathan, along with Sujit Choudhry, represent the Canadian Constitution Foundation (“the CCF”) in this Application for Judicial Review. In that capacity, I have come to know the following details about this proceeding.
2. I am informed by Ms. Shanmuganathan that the following documents are relevant to the Application for Judicial Review in this matter, and they are attached as exhibits.
3. A copy of the “February 14, 2022 “Declaration of Public Order Emergency Explanation pursuant to subsection 58(1) of the *Emergencies Act*” is attached and marked as **Exhibit A**.
4. A copy of the O.Reg. 69/22 issued pursuant to the *Emergency Management and Civil Protection Act*, RSO 1990, c E9 is attached and marked as **Exhibit AA**.

5. A copy of an Ottawa Police Service press release dated January 26, 2022 is attached and marked as **Exhibit B**.
6. A copy of the Direction of the Minister under a Declared State of Emergency (section 14 of the *Emergency Management Act*) 22-002 is attached and marked as **Exhibit BB**.
7. A copy of an Ottawa Citizen article (“Egan: With fresh reinforcements, finally some pushback from police”) dated February 7, 2022 is attached and marked as **Exhibit C**.
8. A copy of N.S. Reg. 16/2022 issued pursuant to section 8 of the *Summary Proceedings Act*, RNS, c-450 is attached and marked as **Exhibit CC**.
9. A copy of a CBC article (“Ottawa declares state of emergency as police boost enforcement, target protest’s fuel supply”) dated February 6, 2022 is attached and marked as **Exhibit D**.
10. A copy of O.Reg 70/22 issued pursuant to the *Emergency Management and Civil Protection Act* is attached and marked as **Exhibit DD**.
11. A copy of the “Report to the Houses of Parliament: *Emergencies Act* Consultation” dated February 16, 2022 is attached and marked as **Exhibit E**.
12. A copy of O.Reg 71/22 issued pursuant to the *Emergency Management and Civil Protection Act* is attached and marked as **Exhibit EE**.
13. A copy of a Letter from Mayor Watson dated February 7, 2022 is **Exhibit F**.
14. A copy of a CBC article (“Charges from Ambassador Bridge protest in Windsor, Ont., now up to 90”) dated February 15, 2022 is attached and marked as **Exhibit FF**.

15. A copy of an Ottawa Police Service press release dated February 20, 2022 regarding Tyson Billings is attached and marked as **Exhibit G**.
16. A copy of the Statement from the Office of the Premier of Ontario cited in a tweet by Ryan O'Connor dated February 10, 2022 is attached and marked as **Exhibit GG**.
17. A copy of an Ottawa Police Service press release dated February 12, 2022 is attached and marked as **Exhibit H**.
18. A copy of an Ottawa Police Service press release dated February 19, 2022 regarding Patrick James King is attached and marked as **Exhibit I**.
19. A copy of an Ottawa Police Service press release dated February 18, 2022 regarding Tamara Lich is attached and marked as **Exhibit J**.
20. A copy of an Ottawa Police Service press release dated February 18, 2022 regarding Christopher John Barber is attached and marked as **Exhibit K**.
21. A copy of an Ottawa Police Service press release dated February 21, 2022 is attached and marked as **Exhibit L**.
22. A copy of a Windsor Police Service press release dated February 8, 2022 is attached and marked as **Exhibit M**.
23. A copy of a Windsor Police Service press release dated February 11, 2022 is attached and marked as **Exhibit N**.
24. A copy of the Injunction Order by Chief Justice Morawetz dated February 11, 2022 is attached and marked as **Exhibit O**.

25. A copy of the Western Standard article (“Alberta farmers plan Coutts blockade”) dated January 28, 2022 is attached and marked as **Exhibit P**.
26. A copy of a letter from the Honourable Ric McIver dated February 5, 2022 is attached and marked as **Exhibit Q**.
27. A copy of a RCMP press release dated February 16, 2022 is attached and marked as **Exhibit R**.
28. A copy of a letter from the Honourable Heather Stefanson dated February 11, 2022 is attached and marked as **Exhibit S**.
29. A copy of a CBC article (“RCMP arrest 4 people for mischief at border protests in Surrey, B.C.”) dated February 13, 2022 is attached and marked as **Exhibit T**.
30. A copy of a RCMP press release dated February 19, 2022 is attached and marked as **Exhibit U**.
31. A copy of a CBC article (“Ontario declares state of emergency in response to convoy protests”) dated February 11, 2022 is attached and marked as **Exhibit V**.
32. A copy of a CBC article (“Ontario court freezes access to funds raised for protest convoy on GiveSendGo platform”) dated February 10, 2022 is attached and marked as **Exhibit W**.
33. A link to video recording of the meeting of the Standing Committee on Public Safety and National Security dated February 10, 2022: <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2?fk=11479035> is attached and marked as **Exhibit X**.

34. A copy of the article by Patricia Peppin, “Emergency Legislation and Rights in Canada: The War Measures Act and Civil Liberties” (1993) 18 *Queen’s Law Journal* is attached and marked as **Exhibit Y**.

35. A copy of the Injunction ordered by Justice McWatt dated February 15, 2022 is attached and marked as **Exhibit Z**.

36. I make this affidavit in support of the Application for Judicial Review and for no other or improper purpose.

AFFIRMED remotely by Madeleine Ross
stated as being located at the City of Toronto
in the Province of Ontario on the 22nd
day of February, 2022 in accordance with
O. Reg 431/20, Administering Oath or
Declaration Remotely

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MADELEINE ROSS



A Commissioner, etc.

This is **EXHIBIT "A"**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan

February 14, 2022 Declaration of Public Order Emergency
Explanation pursuant to subsection 58(1) of the *Emergencies Act*

Declaration of Public Order Emergency

On February 14, 2022, the Governor in Council directed that a proclamation be issued pursuant to subsection 17(1) of the *Emergencies Act* declaring that a public order emergency exists throughout Canada that necessitates the taking of special temporary measures for dealing with the emergency.

In order to declare a public order emergency, the *Emergencies Act* requires that there be an emergency that arises from threats to the security of Canada that are so serious as to be a national emergency. Threats to the security of Canada include the threat or use of acts of serious violence against persons or property for the purpose of achieving a political or ideological objective. A national emergency is an urgent, temporary and critical situation that seriously endangers the health and safety of Canadians that cannot be effectively dealt with by the provinces or territories, or that seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada. It must be a situation that cannot be effectively dealt with by any other law of Canada. Any measures taken under the *Act* must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* and should be carefully tailored to limit any impact on *Charter* rights to what is reasonable and proportionate in the circumstances.

The *Proclamation Declaring a Public Order Emergency* made on February 14, 2022 specified that the public order emergency is constituted of:

- (i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,
- (ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (iii) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States (U.S.), that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

The proclamation specifies six types of temporary measures that may be necessary to deal with the public order emergency:

(i) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

(iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(iv) measures to authorize the Royal Canadian Mounted Police (RCMP) to enforce municipal and provincial laws by means of incorporation by reference,

(v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(vi) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

These measures have been implemented by the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*.

Section 58(1) of the *Emergencies Act* requires that a motion for confirmation of a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for

issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, be laid before each House of Parliament within seven sitting days after the declaration is issued.

Background leading to the declaration of emergency

The “Freedom Convoy 2022” was the first manifestation of this growing movement centered on anti-government sentiments related to the public health response to the COVID-19 pandemic. Trucker convoys began their journey from various points in the country, and the movement arrived in Ottawa on Friday, January 28, 2022. Since then, the movement has only continued to gain momentum across the country, with significant increase in numbers in Ottawa as well as protests and blockades spreading in different locations, including strategic ports of entry (e.g., Ambassador Bridge, Ontario; Coutts, Alberta; and Emerson, Manitoba).

Participants of these activities have adopted a number of tactics that are threatening, causing fear, disrupting the peace, impacting the Canadian economy, and feeding a general sense of public unrest – either in favour or against the movement. This has included harassing and berating citizens and members of the media, slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The movement has moved beyond a peaceful protest, and there is significant evidence of illegal activity underway. Regular citizens, municipalities and the province of Ontario have all participated in court proceedings seeking injunctive relief to manage the threats and impacts caused by the convoy’s activities, and a proposed class-action has been filed on behalf of residents of Ottawa.

Anecdotal reports of donations from outside Canada to support the protesters were given credence when, on February 13, 2022, hackers of the crowdfunding website, GiveSendGo.com, released hacked data that revealed information about donors and the amount of donations directed to the protesters. According to the Canadian Broadcasting Corporation’s February 14, 2022 analysis of the data, 55.7% of the 92,844 donations made public were made by donors in the U.S., compared to 39% of donors located in Canada. The remaining donors were in other countries, with the U.K. being the most common. The amount donated by U.S. donors totaled \$3.6 million (USD). Many of the donations were made anonymously.

Requests for Assistance and Consultations

The federal government has been in contact with its provincial counterparts throughout this situation. Some requests for federal support to deal with the blockades were from:

- the City of Ottawa for policing services;
- the Province of Ontario with respect to the Ambassador Bridge in Windsor, Ontario; and

- the Province of Alberta with respect to tow truck capacity at the Coutts port of entry.

For further details on the consultations, please see the Report to the Houses of Parliament: *Emergencies Act Consultations*.

Emergency Measures Taken by Ontario and other provinces

On February 11, 2022, the Province of Ontario declared a province-wide state of emergency under its *Emergency Management and Civil Protection Act*, in response to the interference with transportation and other critical infrastructure throughout the province, which is preventing the movement of people and delivery of essential goods.

Measures that have since been implemented under these emergency measures include: fines and possible imprisonment for protesters refusing to leave, with penalties of \$100,000 and up to one year of imprisonment for non-compliance.

On February 12, 2022, the Ontario Government also enacted legislation under the *Emergency Management and Civil Protection Act*, (Ontario Regulation 71/22) making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. New Brunswick has announced that it will update its *Emergency Act* to prohibit stopping or parking a vehicle or otherwise contributing to the interruption of the normal flow of vehicle traffic on any road or highway. Nova Scotia similarly issued a directive under its *Emergency Management Act* prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border.

No other province has signaled its intent to take similar steps.

As detailed in the Reasons below, the convoy activities have led to an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.

Reasons for Public Order Emergency

The situation across the country remains concerning, volatile and unpredictable. The decision to issue the declaration was informed by an assessment of the overall, national situation and robust discussions at three meetings of the Incident Response Group on February 10, 12 and 13, 2022.

The intent of these measures is to supplement provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. These time-limited measures will be used only where needed depending on the nature of the threat and its evolution and would not displace or replace provincial and territorial authorities, nor would they derogate provinces and territories' authority to direct their police

forces. The convoy activities and their impact constituting the reasons for the emergency as set out in the *Proclamation Declaring a Public Order Emergency* are detailed below:

- i. the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;**

The protests have become a rallying point for anti-government and anti-authority, anti-vaccination, conspiracy theory and white supremacist groups throughout Canada and other Western countries. The protesters have varying ideological grievances, with demands ranging from an end to all public health restrictions to the overthrow of the elected government. As one example, protest organizers have suggested forming a coalition government with opposition parties and the involvement of Governor General Mary Simon. This suggestion appears to be an evolution of a previous proposal from a widely circulated “memorandum of understanding” from a group called “Canada Unity” that is taking part in the convoy. The “memorandum of understanding” proposed that the Senate and Governor General could agree to join them in forming a committee to order the revocation of COVID-19 restrictions and vaccine mandates.

Tactics adopted by protesters in support of these aims include slow roll activity, slowing down traffic and creating traffic jams, in particular near ports of entry, as well as reports of protesters bringing children to protest sites to limit the level and types of law enforcement intervention. The intent of the protestors at ports of entry was to impede the importation and exportation of goods across the Canada-U.S. border in order to achieve a change in the Government of Canada’s COVID health measures in addition to other government policies.

Trucks and personal vehicles in the National Capital Region continue to disrupt daily life in Ottawa and have caused retail and other businesses to shutter. Local tow truck drivers have refused to work with governments to remove trucks in the blockade. The Chief of the Ottawa Police Service resigned on February 15, 2022 in response to criticism of the police’s response to the protests.

Convoy supporters formerly employed in law enforcement and the military have appeared alongside organizers and may be providing them with logistical and security advice, which may pose operational challenges for law enforcement should policing techniques and tactics be revealed to convoy participants. There is evidence of coordination between the various convoys and blockades.

Violent incidents and threats of violence and arrests related to the protests have been reported across Canada. The RCMP's recent seizure of a cache of firearms with a large quantity of ammunition in Coutts, Alberta, indicated that there are elements within the protests that have intentions to engage in violence. Ideologically motivated violent extremism adherents may feel empowered by the level of disorder resulting from the protests. Violent online rhetoric, increased threats against public officials and the physical presence of ideological extremists at protests also indicate that there is a risk of serious violence and the potential for lone actor attackers to conduct terrorism attacks.

To help manage these blockades and their significant adverse impacts, the *Emergency Measures Regulations* prohibit certain types of public assemblies ("prohibited assemblies") that may reasonably be expected to lead to a breach of the peace by: (i) the serious disruption of the movement of persons or goods or the serious interference with trade; (ii) interference with the functioning of critical infrastructure; or (iii) the support the threat or use of acts of serious violence against persons or property. They also prohibit individuals from (i) participating or causing minors to participate in prohibited assemblies; (ii) travelling to or within an area where prohibited assemblies are taking place, or causing minors to travel to or within 500 metres of a prohibited assembly, subject to certain exceptions; and (iii) directly or indirectly using, collecting, providing, making available or soliciting property to facilitate or participate in a prohibited assembly or to benefit any person who is facilitating or participating in a prohibited assembly. Foreign nationals are also prohibited from entering Canada with the intent to participate or facilitate a prohibited public assembly, subject to certain exceptions.

The *Emergency Management Regulations* also designate certain places as protected and provide that they may be secured, including Parliament Hill and the parliamentary precinct, critical infrastructures, official residences, government and defence buildings, and war memorials.

ii. the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings

Trade and transportation within Canada and between Canada and the U.S. is highly integrated. Border crossing, railway lines, airports and ports of entry are integrated and are adversely affected where one or more of the components is blockaded or prevented from operating under normal capacity.

Trade between Canada and the U.S. is crucial to the economy and the lives and welfare of all Canadians. Approximately 75% of Canadian exports go to the U.S., generating approximately \$2 billion in imports/exports per day and \$774 billion in total trade between the two countries in 2021.

Blockades and protests at numerous points along the Canada–U.S. border have already had a severe impact on Canada’s economy. Protests at the major ports of entry at the Ambassador Bridge in Windsor, Ontario; Emerson, Manitoba; Coutts Alberta; and, Pacific Highway in British Columbia, each of which is critical to the international movement of people and goods, required the Canada Border Services Agency (CBSA) to suspend services.

An essential trading corridor, the Ambassador Bridge is Canada’s busiest crossing, handling over \$140 billion in merchandise trade in 2021. It accounted for 26% of the country’s exports moved by road in 2021 (\$63 billion out of \$242 billion) and 33% of the country’s imports (\$80 billion out of \$240 billion). Since the blockades began at the Ambassador Bridge, over \$390 million in trade each day with Canada’s most important trading partner, the U.S., has been affected, resulting in the loss of employee wages, reduced automotive processing capacity and overall production loss in an industry already hampered by the supply shortage of critical electronic components. This bridge supports 30% of all trade by road between Canada and the U.S. The blockades in Coutts, Alberta, and Emerson, Manitoba, have affected approximately \$48 million and \$73 million in trade each day, respectively. These recent events targeting Canada’s high volume commercial ports of entry have irreparably harmed the confidence that our trading partners have in Canada’s ability to effectively contribute to the global economy and will result in manufacturers reassessing their manufacturing investments in Canada, impacting the health and welfare of thousands of Canadians.

In addition, throughout the week leading up to February 14, 2022, there were 12 additional protests that directly impacted port of entry operations. At two locations, Pacific Highway and Fort Erie, protestors had breached the confines of the CBSA plaza resulting in CBSA officers locking down the office to prevent additional protestors from gaining entry.

More specifically, disruptions at strategic ports of entry in Alberta, British Columbia, Manitoba and Ontario prior to the declaration of the emergency included:

- Ambassador Bridge, Windsor, Ontario: The busiest crossing along the Canada-U.S. border had been blocked since February 7, 2022. After an injunction was issued on February 11, 2022, law enforcement started to disperse protesters. On February 13, 2022, police enforcement action continued with reports of arrests being made and vehicles towed. As of the evening of February 13, 2022, the Ambassador Bridge has been fully reopened, and no delays at the border crossing are being reported, but efforts continue to ensure that the bridge remains open.

- Sarnia, Ontario: On February 8, 2022, two large groups of protestors conducted a blockade of the provincial highway leading to and from the Sarnia Blue Water Bridge. This port of entry is Canada's second busiest border crossing with imports and exports serving the oil and gas, perishable foods, livestock and automotive sectors. The protest resulted in the suspension of all outbound movement of commercial and traveller vehicles to the U.S. along with reduced inbound capacity for incoming conveyances. The Ontario Provincial Police (OPP) were able to restore order to the immediate area of the port of entry after ten hours of border disruption. On February 9, 2022, members of one of the protest groups established a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway, resulting in the diversion of international traffic to emergency detour routes to gain access to the border. This activity continued until February 14, 2022 when access to the portion of the highway was restored.
- Fort Erie, Ontario: On February 12, 2022, a large protest targeted the CBSA Peace Bridge port of entry at Fort Erie, Ontario. This port of entry is Canada's third busiest land border crossing responsible for millions of dollars in international trade each day of perishable goods, manufacturing components and courier shipments of personal and business goods being imported and exported. The protest disrupted inbound traffic for a portion of the day on February 12, 2022 and resulted in the blockade of outbound traffic until February 14, 2022 when the OPP and Niagara Regional Police were able to restore security of the trade corridor linking the provincial highway to the border crossing.
- Emerson, Manitoba: As of February 13, 2022, vehicles of the blockade remain north of the port of entry. Some local traveller traffic was able to enter Canada, however commercial shipments are unable to use the highway North of Emerson resulting in disruptions to live animal, perishable and manufactured goods shipments into Canada and exports to the U.S. The protesters have allowed some live animal shipments to proceed through the blockade for export to the U.S.
- Coutts, Alberta: The blockade began on January 29, 2022, resulting in the disruption of Canada and U.S. border traffic. This port of entry is a critical commercial border point for the movement of live animals, oil and gas, perishable and manufactured goods destined for Alberta and western Saskatchewan. As of February 14, 2022, the RCMP, who is the police of jurisdiction pursuant to the provincial Police Service Agreement, have arrested 11 individuals and seized a cache of weapons and ammunition. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences. The RCMP restored access to the provincial highway North of Coutts on February 15, 2022 and border services were fully restored, but efforts continue to ensure that it remains open.

- Vancouver, British Columbia (BC), and Metro area: On February 12, 2022, several vehicles including a military-style vehicle broke through an RCMP barricade in south Surrey, BC, on their way to the Pacific Highway port of entry. Protesters forced the highway closure at the Canada-U.S. border in Surrey.

In addition, on February 12, 2022, police in Cornwall, Ontario warned of potential border delays and blockages due to protests.

These blockades and protests directly threaten the security of Canada's borders, with the potential to endanger the ability of Canada to manage the flow of goods and people across the border and the safety of CBSA officers and to undermine the trust and coordination between CBSA officials and their American partners. Additional blockades are anticipated. While Ontario's *Emergency Management and Civil Protection Act* authorizes persons to provide assistance, it specifically does not compel them to do so. Tow truck operators remain free to decline requests to tow vehicles that were part of the blockades and they have refused to render assistance to the government of Ontario. It was beyond the capacity of the province of Ontario to ensure in a timely manner that tow trucks could be used to clear vehicles. The emergency measures now allow the federal Minister of Public Safety and Emergency Preparedness or any other person acting on their behalf to immediately compel individuals to provide and render essential goods and services for the removal, towing or storage of any vehicle or other object that is part of a blockade and provides that reasonable compensation will be payable. Individuals who suffer loss or damage because of actions taken under these Regulations may apply for compensation.

Threats were also made to block railway lines, which would result in significant disruptions. Canada's freight rail industry transports more than \$310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing to the agricultural, natural resource, wholesale and retail sectors. In addition, freight railways have Canadian operating revenues of more than \$16 billion a year.

The impact on important trade corridors and the risk to the reputation of Canada as a stable, predictable and reliable location for investment may be jeopardized if disruptions continue. The current federal and provincial financial systems are ill-equipped to mitigate the adverse effects of the economic impact without additional measures. The *Emergency Economic Measures Order* requires a comprehensive list of financial service providers to determine whether any of the property in their possession or control belong to protesters participating in the illegal blockades and to cease dealing with those protesters. Financial service providers who would otherwise be outside federal jurisdiction are subject to the Order. Given the ability to move financial resources between financial service providers without regard to their geographic location or whether they are provincially- or federally-regulated, it is essential that all financial service providers be subject to the Order if protesters are to be prevented from accessing financial services. The importance of

this measure is highlighted by the Canadian Broadcasting Corporation's recent reporting about the crowdfunding website, GiveSendGo.com, which indicated that the majority of the donations to the protests were made by donors outside of Canada.

Before the new measures, in respect of insurance, provinces would only be able to cancel or suspend policies for vehicles registered in that province. Protestors from different provinces would not be subject to, for example, the Government of Ontario's powers under its declaration of a state of emergency to cancel licenses of vehicles participating in blockades or prohibited assemblies. The emergency measures now require insurance companies to cancel or suspend the insurance of any vehicle or person while that person or vehicle is taking part in a prohibited assembly as defined under the new *Emergency Measures Regulations*.

iii. the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the U.S., that are detrimental to the interests of Canada

The U.S. has expressed concerns related to the economic impacts of blockades at the borders, as well as possible impacts on violent extremist movements. During a call with President Joe Biden on February 11, 2022, the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible was discussed, given their role as vital bilateral trade corridors, and as essential to the extensive interconnections between our two countries.

Disruptions at ports of entry have significant impacts on trade with U.S. partners and the already fragile supply chain, and have resulted in temporary closures of manufacturing sites, job loss, and loss of revenues. One week of the Ambassador Bridge blockade alone is estimated to have caused a total economic loss of \$51 million for U.S. working people and businesses in the automotive and transportation industry. Consequently, the protests have been the cause of significant criticism and concern from U.S. political, industry and labour leaders.

The Governor of Michigan has issued several statements expressing her frustration with the ongoing protests and blockade and the damage they are doing to her state and constituents. Similar frustrations have been voiced by the General President of the International Brotherhood of Teamsters and the Canada-U.S. Business Association. The blockades and protests are of such concern to the U.S. government that the Department of Homeland Security Secretary has offered its assistance in ending the protests.

More generally, the protests and blockades are eroding confidence in Canada as a place to invest and do business. Politicians in Michigan have already speculated that disruptions in cross border trade may lead them to seek domestic, as opposed to Canadian, suppliers for automotive parts.

iv. the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number

Canada has a uniquely vulnerable trade and transportation system. Relative to global competitors, Canadian products travel significantly further, through challenging geography and climate conditions. Moreover, trade and transport within Canada, and between Canada and the U.S. is highly integrated.

The closure of, and threats against, crucial ports of entry along the Canada-U.S. border has not only had an adverse impact on Canada's economy, it has also imperiled the welfare of Canadians by disrupting the transport of crucial goods, medical supplies, food, and fuel across the U.S.-Canada border. A failure to keep international crossings open could result in a shortage of crucial medicine, food and fuel.

In addition to the blockades along the border, protesters attempted to impede access to the MacDonald-Cartier International Airport in Ottawa and threatened to blockade railway lines. The result of a railway blockade would be significant. As noted above, Canada's freight rail industry transports more than \$310 billion worth of goods each year on a network that runs from coast to coast. Canada's freight railways serve customers in almost every part of the Canadian economy: from manufacturing, to the agricultural, natural resource, wholesale and retail sectors.

v. the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

The protests and blockades pose severe risks to public safety. While municipal and provincial authorities have taken decisive action in key affected areas, such as law enforcement activity at the Ambassador Bridge in Windsor, considerable effort was necessary to restore access to the site and will be required to maintain access.

There is significant evidence of illegal activity to date and the situation across the country remains concerning, volatile and unpredictable. The Freedom Convoy could also lead to an increase in the number of individuals who support ideologically motivated violent extremism (IMVE) and the prospect for serious violence. Proponents of IMVE are driven by a range of influences rather than a singular belief system. IMVE radicalization is more often caused by a combination of ideas and grievances resulting in a personalized worldview. The resulting worldview often centres on the willingness to incite, enable or mobilize violence.

On February 14, 2022, the RCMP arrested numerous individuals in Coutts, Alberta associated with a known IMVE group who had been engaged with the protests and seized a cache of firearms with a large quantity of ammunition, which indicates that there are elements within this movement that intend to engage in violence. Four of these individuals were charged with conspiracy to commit murder, in addition to other offences.

Since the convoy began, there has been a significant increase in the number and duration of incidents involving criminality associated with public order events related to anti-public health measures and there have been serious threats of violence assessed to be politically or ideologically motivated. Two bomb threats were made to Vancouver hospitals and numerous suspicious packages containing rhetoric that references the hanging of politicians and potentially noxious substances were sent to offices of Members of Parliament in Nova Scotia. While a link to the convoy has not yet been established in either case, these threats are consistent with an overall uptick in threats made against public officials and health care workers. A number of threats were noted regarding the Nova Scotia-New Brunswick border demonstration set for February 12, 2022, including a call to bring “arms” to respond to police if necessary. An Ottawa tow truck operator reported that he received death threats from protest supporters who mistakenly believed he provided assistance to the police.

The Sûreté du Québec (SQ) has been dealing with multiple threats arising from the protests. In early February, 2022, the SQ was called in to provide protection to the National Assembly in response to the convoy protests in Quebec City. Some individuals associated with the protests had threatened to take up arms and attack the National Assembly. This led to all parties at the National Assembly strongly denouncing all threats of violence. While that protest was not accompanied by violence, the threat has not ended; the protesters have stated that they plan to return on February 19, 2022. At the same time, the SQ is also dealing with threats of protests and blockades along Quebec’s border with New York State. This requires the SQ to deploy resources to establish checkpoints and ensure that crucial ports of entry remain open.

Other incidents which have occurred during the course of the blockades point to efforts by U.S.-based supporters of IMVE to join protests in Canada, or to conduct sympathetic disruptive blockades on the U.S. side of ports of entry. In some cases, individuals were openly carrying weapons. U.S.-based individuals, some openly espousing violent extremist rhetoric, have employed a variety of social media and other methods to express support for the ongoing blockades, to advocate for further disruptions, and to make threats of serious violence against Canadian law enforcement and the Government of Canada.

Several individuals with U.S. status have attempted to enter Canada with the stated purpose of joining the blockades. One high profile individual is known to have openly expressed opposition to COVID-19-related health measures, including vaccine mandates and has attempted to import

materials to Canada for the express purpose of supporting individuals participating in the blockades.

As of February 14, 2022, approximately 500 vehicles, most of them commercial trucks, were parked in Ottawa's downtown core. There have been reports of protesters engaging in hate crimes, breaking into businesses and residences, and threatening law enforcement and Ottawa residents.

Protesters have refused to comply with injunctions covering downtown Ottawa and the Ambassador Bridge and recent legislation enacted by the Ontario Government under the *Emergency Management and Civil Protection Act* (Ontario Regulation 71/22), which makes it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure. In Ottawa, the Ottawa Police Service has been unable to enforce the rule of law in the downtown core due to the overwhelming volume of protesters and the Police's ability to respond to other emergencies has been hampered by the flooding of Ottawa's 911 hotline, including by individuals from outside Canada. The occupation of the downtown core has also hindered the ability of emergency medical responders to attend medical emergencies in a timely way and has led to the cancellation of many medical appointments.

The inability of municipal and provincial authorities to enforce the law or control the protests may lead to a further reduction in public confidence in police and other Canadian institutions.

The situation in downtown Ottawa also impedes the proper functioning of the federal government and the ability of federal government officials and other workers to enter their workplaces in the downtown core safely.

Furthermore, the protests jeopardize Canada's ability to fulfil its obligations under the *Vienna Convention on Diplomatic Relations* as a host of the diplomatic community and pose risks to foreign embassies, their staff and their access to their diplomatic premises.

Conclusion

The ongoing Freedom Convoy 2022 has created a critical, urgent, temporary situation that is national in scope and cannot effectively be dealt with under any other law of Canada. The blockades of the ports of entry have disrupted the transportation of crucial medicine, goods, fuel and food to Canadians and are causing significant adverse effects on Canada's economy, relationship with trading partners and supply chains. These trade disruptions, the increase in criminal activity, the occupation of downtown Ottawa and the threats of violence and presence of firearms at protests – along with the other reasons detailed above – constitute a public order emergency, an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency. The types of measures set out in the February 14, 2022 *Proclamation Declaring a Public Order Emergency* are necessary in order to supplement

provincial and territorial authorities to address the blockades and occupation and to restore public order, the rule of law and confidence in Canada's institutions. The measures have been carefully tailored such that any potential effects on rights protected under the *Canadian Charter of Rights and Freedoms* are reasonable and proportionate in the circumstances.

This is **EXHIBIT “AA”**
to the Affidavit of
MADELEINE ROSS
sworn before me by video conference
this 22nd day of February, 2022.



Janani Shanmuganathan



[Français](#)

Emergency Management and Civil Protection Act

ONTARIO REGULATION 69/22

DECLARATION OF EMERGENCY

Consolidation Period: From February 11, 2022 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

WHEREAS the interference with transportation infrastructure, including essential trade corridors, and other critical infrastructure that is currently occurring in locations throughout the Province prevents the movement of people and the delivery of essential goods and services and constitutes a danger of major proportions that could result in serious harm to persons and substantial damage to property;

AND WHEREAS the criteria set out in subsection 7.0.1 (3) of the *Act* have been satisfied;

NOW THEREFORE, an emergency is hereby declared pursuant to section 7.0.1 of the Act in the whole of the Province of Ontario.

[Français](#)

This is **EXHIBIT “B”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan



OTTAWA POLICE SERVICE
SERVICE DE POLICE D'OTTAWA
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Feedback

Significant traffic disruptions expected this weekend due to demonstrations

Posted On Wednesday January 26, 2022

Like 41

Tweet



Subscribe

FOR IMMEDIATE RELEASE: Wednesday, January 26, 2022 4:20pm

(Ottawa) – The Ottawa Police Service (OPS) is advising the public that demonstrations expected in Ottawa throughout the weekend, starting Friday, will have significant impacts on traffic throughout the area.

Residents and visitors can expect to see a large police and emergency services presence in the Downtown core and on major highways and roads. Traffic delays and congestion will occur and may occur on a large scale.

Police and the City of Ottawa will keep the public informed on city-wide traffic and transit.

We ask that members of the public avoid unnecessary travel, especially in the downtown core, this weekend, if possible. If you do travel, plan ahead and expect significant delays.

Follow the city's traffic management tool @Ottawa_Traffic for real-time updates or utilize a traffic monitoring app like Google or Waze to check for traffic congestion before you travel.

Today, the Ottawa Police Services Board hosted a special meeting and the Ottawa Police provided details on their approach for these events. You can find out more about the information shared on the [City Council YouTube](#) page.

Further updates will be provided as more information becomes available. Follow us at @OttawaPolice for more details.

- 30 -

CONTACT:

Media Relations Section

Tel: 613-236-1222, ext. 5366

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Contact Us

Ottawa Police Service

P.O. Box 9634 Station T, Ottawa, Ontario, K1G 6H5

T: 613-236-1222, TTY: 613-232-1123

[Email Us](#)

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Design by eSolutionsGroup (<http://www.esolutionsgroup.ca>).

This is **EXHIBIT “BB”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan

**Direction of the Minister under a
Declared State of Emergency**
(Section 14 of the *Emergency Management Act*)
(22-002)

During the Provincial State of Emergency declared Province-wide on March 22, 2020 by the Minister of Municipal Affairs and Housing, having satisfied myself that it is necessary for the protection of property and the health or safety of persons in the Province, and under the authority provided to me in Section 14 of the *Emergency Management Act*, including specifically under clause (d) to control or prohibit travel to or from an area or on a road, street or highway, I direct as follows:

HIGHWAY BLOCKADE BAN

1. Effective **on and after January 28, 2022**, all persons are prohibited from
 - (a) stopping, parking, or operating a vehicle or putting any item in such a manner as to create or contribute to a partial or complete blockade of the normal flow of vehicle traffic on a road, street or highway in the Province,
 - (b) participating in, financing, organizing, aiding, encouraging, or supporting an interruption of the normal flow of vehicle traffic at a location on or near Highway 104 in Cumberland County, Nova Scotia, or the Nova Scotia- New Brunswick border, or
 - (c) participating in the stopping or gathering of people along the side of, or in an area on, or near the
 - (i) Cobequid Pass portion of Highway 104 and the associated access roads and toll plaza,
 - (ii) Highway 104 in Cumberland County, Nova Scotia, or
 - (iii) Nova Scotia-New Brunswick border crossing

in support of a 2022 Freedom Convoy, an Atlantic Canada Holds the Line event, or an organized protest intended to interfere with the normal flow of vehicle traffic on a road, street, or highway.
2. The prohibitions in Section 1 do not apply to

- (i) Provincial or municipal workers, or the vehicles used while engaged in sanctioned highway maintenance and repairs, or
- (ii) law enforcement officers while on duty.

This Direction is in addition to any requirements established in a Medical Officer's order under the *Health Protection Act*, and any other Directions issued under the *Emergency Management Act*.

A failure to comply with this Direction could result in a summary conviction with fines between \$3,000 to \$10,000 for individuals and between \$20,000 to \$100,000 for a corporation per incident.

This Direction will remain in place for the duration of the Provincial State of Emergency, including any renewal periods made by the Minister and approved by Governor in Council under Section 19 of the *Emergency Management Act*, unless it is terminated earlier in writing.

Dated January 28th, 2022

ORIGINAL SIGNED BY:

Honourable John Lohr
Minister of Municipal Affairs and Housing

This is **EXHIBIT “C”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan

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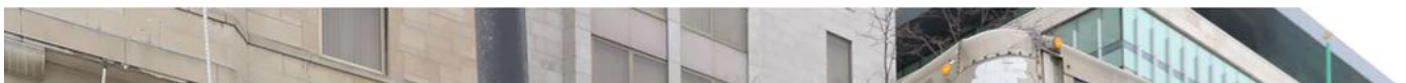
Local News / Columnists

Egan: With fresh reinforcements, finally some pushback from police

"The good news, though, and maybe Sloly should have been more clear about this, is that actual enforcement is beginning to happen."

Kelly Egan

Feb 07, 2022 • February 7, 2022 • 4 minute read





A trucker gets three tickets from the Ottawa police on Elgin Street in Ottawa on Sunday. PHOTO BY TONY CALDWELL /Postmedia

So, this was the weekend of “surge and contain.”

STORY CONTINUES BELOW

Like many things we've heard from Ottawa police Chief Peter Sloly, it wasn't entirely clear Friday what he was talking about.



It's certainly true there were more police officers in the "red zone" around Parliament Hill than last weekend. There were seven or eight Sudbury police officers, for instance, walking around in a pack on the sidewalk — "patrolling" it is probably called, or "surging," as it were, "containing" who knows what.

But there were barbecues on the go on Wellington Street and wood-burning fires in metal containers and Christian tents set up and fuel containers moving here and there and a religious revival going on in word

and song — all on the public roadway — and a ridiculous amount of noise.

So, does it matter if there are 10,000 police officers down there — “surging” or not — if there are no consequences for breaking the rules, for days in a row? More on this in a minute.

STORY CONTINUES BELOW

There was a quite remarkable “special” meeting of the Ottawa Police Services Board on Saturday.

Bless board member Carol Anne Meehan for her plain-dealing. Though she looked at times as though her head might explode, the Gloucester-South Nepean councillor was seeking an explanation from Sloly about why we haven’t seen much push-back from police against even the most obvious infractions.

“Please, I’m begging you. What’s going to be done here?”

Indeed, she put her finger on a city’s frustration when she further added: “How do we know this will ‘blow up’ if we haven’t done anything except monitor and keep the peace?” (This is in relation to Sloly’s repeated warnings about “massive risk” to anything approaching robust enforcement.)

STORY CONTINUES BELOW

Part of her frustration, no doubt, is Sloly's habit of donning his professor hat and giving wordy, off-point answers about lacking the correct "justice system framework" or absent "multi-lateral agreements" between governments and some unhelpful blather about an outdated Police Services Act.

Good Lord, all we really want to know is why you can't get a bunch of big-ass trucks out of the way, or at least ticket them to death, by the hour if necessary. (On that point, by the way, we're told we don't have enough heavy-lift tow trucks to get the removal job done efficiently.)

The good news, though, and maybe Sloly should have been more clear about this, is that actual enforcement is beginning to happen and there is, no doubt, a plan being worked on to tighten the perimeter on the core group of trucking protesters.

STORY CONTINUES BELOW

The instant "shack" that was set up at Confederation Park, for instance, was moved, then taken away altogether on Sunday afternoon. While it may have been headed to the baseball stadium parking lot on Coventry Road, we'll take anything as progress at this point.

And Sunday morning brought news the police have, in fact, been doing more than passively patrolling.

The force reports that, since Saturday morning, more than 450 tickets have been written for violations related to the trucker protest, which has now been going on for 10 days.

We're getting smarter with relation to shutting ramps off the 417 so the influx of farm vehicles Saturday did not have disastrous results. New concrete barriers are, at least visually, creating the feeling of "boxing in" the trucks right on the Hill's doorsteps.

STORY CONTINUES BELOW



Sunday afternoon brought word that police would be cracking down on the supply of fuel and other materials to the vehicles in the core. And Mayor Jim Watson's declaration of a state of emergency will only open more doors to extraordinary measures.

So, maybe we're getting somewhere. It can only help, too, that Sloly announced during the Saturday meeting that 257 RCMP officers were being made available to OPS. (In terms of numbers, especially

early in the week when the protest-crowd slumps, there will surely be enough manpower to handle whatever needs to be done.)

One has to think this week will be a turning point. Everyone is tired, or outright exhausted, there is no movement on “ending mandates,” not even a hint at political negotiations, a growing need for everyone to get home. (Do these people not have lives?)

STORY CONTINUES BELOW

So we arrive at another hard reality. To borrow an old saying: they have the trucks but we have the time. Inasmuch as this has been a colossal disruption, or worse, downtown Ottawa isn't going anywhere because you honk horns for a long time.

We may have botched the beginning of this exercise, but it looks like we're finally finding some spine.

To contact Kelly Egan, please call 613-291-6265 or email kegan@postmedia.com

[Twitter.com/kellyegancolumn](https://twitter.com/kellyegancolumn)

READ MORE COVERAGE OF THE TRUCKER PROTEST:

[Truck Convoy: People bringing 'material' supports to protesters—including gas—could be subject to arrest; Some protesters relocating from Confederation Park](#)

['Everybody is at a breaking point': Police board seeks more help as protest strengthens](#)

[Trucker protest noise may lead to 'chronic annoyance and distress'](#)

['An occupation': GoFundMe pulls plug on fundraiser for convoy protesters](#)

['We have to pay rent': Downtown businesses brace for another weekend of protest pandemonium](#)

[Answers to your most common questions on the Ottawa truck protest](#)



This is **EXHIBIT “CC”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan

Order

**Made under Section 8 of Chapter 450
of the Revised Statutes of Nova Scotia, 1989,
the *Summary Proceedings Act***

I, Brad Johns, Attorney General and Minister of Justice for the Province of Nova Scotia, pursuant to Section 8 of Chapter 450 of the Revised Statutes of Nova Scotia, 1989, the *Summary Proceedings Act*, effective on and after the date of this order, hereby

- (a) amend Schedule 7 to the *Summary Offence Tickets Regulations*, N.S. Reg. 281/2011, made by order of the Attorney General and Minister of Justice dated October 4, 2011, to designate certain offences under the *Emergency Management Act* as summary offence ticket offences, in the manner set forth in the attached Schedule "A"; and
- (b) order and direct that the penalty to be entered on a summons in respect of an offence set out in amendments to the schedules to the *Summary Offence Tickets Regulations*, N.S. Reg. 281/2011, as set forth in the attached Schedule "A", is the out-of-court settlement amount listed in the out-of-court settlement column set out opposite the description for the offence, and includes the charge provided for in, and in accordance with, Sections 8 and 9 of the Act.

Dated and made 4 February, 2022, at Halifax, Halifax Regional Municipality,
Province of Nova Scotia.


Honourable Brad Johns
Attorney General and Minister of Justice

Schedule “A”

**Amendment to the *Summary Offence Tickets Regulations*
made by the Attorney General and Minister of Justice pursuant to Section 8
of Chapter 450 of the Revised Statutes of Nova Scotia, 1989,
the *Summary Proceedings Act***

Schedule 7 to the *Summary Offence Tickets Regulations*, N.S. Reg. 281/2011, made by order of the Attorney General and Minister of Justice dated October 4, 2011, is amended by adding “or Minister’s Direction 22-003 (road blockade ban) (specify)” immediately after “(Highway blockade ban)” in items 7 and 8.

This is **EXHIBIT “D”**

to the Affidavit of

MADELEINE ROSS

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Janani Shanmuganathan

Politics

Ottawa declares state of emergency as police boost enforcement, target protest's fuel supply

Protest is 'most serious emergency our city has ever faced,' mayor says

[Christian Paas-Lang](#) · CBC News · Posted: Feb 06, 2022 12:29 PM ET | Last Updated: February 6



Police line up at the Coventry Road staging area in east Ottawa as they move in to confiscate fuel, vehicles and make arrests Sunday evening. (Joanne Chianello/CBC)



The City of Ottawa declared a state of emergency Sunday afternoon in response to ongoing protests in the downtown core, while Mayor Jim Watson described the situation in the nation's capital as the "the most serious emergency our city has ever faced."

Watson said the declaration will help Ottawa Police get the supplies and equipment they need faster.

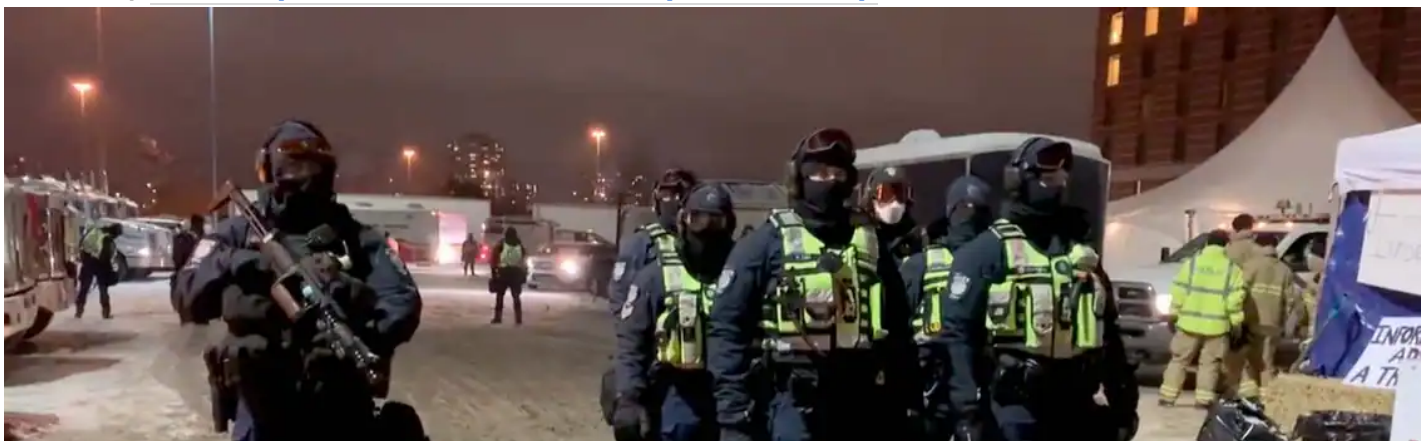
"The state of emergency gives our staff and our city a few extra tools to speed up things like procurement," he said in an interview with CBC News Network on Sunday evening.

"We're in the midst of a serious emergency, the most serious emergency our city has ever faced, and we need to cut the red tape to get these supplies available to our police officers and to our public works staff."

Earlier in the afternoon, Ottawa police announced they would ramp up enforcement on protesters in the city's downtown core, handing out tickets and announcing that anyone looking to bring "material aid," such as fuel, to protesters could be arrested.

Ottawa Police issued a statement late Sunday saying that seven people had been arrested and more than 100 tickets had been issued. The force said 60 criminal investigations were underway, mostly for mischief, theft, hate crimes and property damage.

WATCH / Ottawa police remove fuel from protest camp:



Ottawa declares state of emergency, police remove fuel from protest

**camp**

16 days ago | 3:50

Ottawa police went into a protest camp Sunday evening to remove fuel as the city declared a state of emergency amid the protests. 3:50

Shortly after announcing that Ottawa Police would be cracking down on the protesters' fuel supply, one of the protest organizers said they would find a way around the police action.

On Sunday evening, dozens of heavily armed police officers descended on the baseball stadium parking lot on Coventry Road in east Ottawa that's been serving as the staging for the protesters operating in the downtown core.

- **Removing trucks could be almost 'impossible,' say heavy towing experts**

Protesters said police removed the fuel that was being stored there to supply trucks parked in the city centre.

Snipers stood guard on the roof of the stadium and hotel, on either side of the parking lot, as police moved and protesters yelled, "shame, shame."

The Ottawa Police Service issued a statement shortly after the action saying that two people were arrested at the Coventry Road site for mischief and that "multiple vehicles" were seized.

Judy Trinh  @judyatrinh · Feb 6, 2022



Replying to @judyatrinh

Some truck convoy protestors seem stunned at this display of force, presence of carbine rifles. I will say I did not see police lay hands on anyone. No arrests here- just fuel seizure

Watch on Twitter

Judy Trinh 
@judyatrinh

Protestors yelling at contingent of Ottawa Police and
OPP

Watch on Twitter

8:46 PM · Feb 6, 2022



 2.7K  Reply  Share

[Read 301 replies](#)

City solicitor David White told city councillors on Saturday that the declaration of a state of emergency "does little" in terms of legal authority and does not give more power to Ottawa police.

A local state of emergency will, however, allow Ottawa to work more efficiently to manage essential services and make procurement more flexible, the city said.

Provincial legislation grants mayors powers during an emergency to make orders "not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area."

City yet to ask for military aid

The state of emergency and increased police action represent significant changes in the response to the chaotic situation in Ottawa — where demonstrators have become entrenched in the city's downtown core.

Amid increasing resident anger, police said on Saturday that they lack the resources to end the protest, now in its 10th day.

Politicians have also increasingly denounced the protest over COVID-19 public health restrictions, with Ontario Premier Doug Ford and others calling it an "occupation" and the head of the Ottawa Police Services Board referring to it as an "insurrection."

- [**Downtown closures extended as police arrest 7, issue dozens of tickets**](#)
- [**No end in sight to Ottawa protests, not enough resources, says police chief**](#)

Ford said on Sunday that his government was supporting Ottawa in whatever way it could. His office told CBC News the city had not asked the province to request military aid from the federal government.

In a statement, Ontario's solicitor general, Sylvia Jones, emphasized that politicians cannot direct the police but that discussions were ongoing "to ensure [Ottawa police] have every necessary resource they need to keep their community safe."

Local, provincial and federal politicians have condemned the protesters' actions and called for a solution. But what that solution might be remains unclear.

Protesters in Ottawa haul fuel to their vehicles. The Ottawa Police Service has said that anyone trying to bring 'material support' to demonstrators would be subject to arrest. (CBC)

"This group is emboldened by the lack of enforcement by every level of government," Diane Deans, a city councillor and chair of the police services board, said Saturday.

"We're giving a signal to everyone coming into town that it's a free-for-all," Coun. Carol Anne Meehan said.

More than 650 calls have been made to Ottawa police since the start of the protest, resulting in 97 criminal investigations, police said Sunday. The force said earlier in the week it had opened 11 investigations related to hate crimes and four people have been charged.

Structures in place in Ottawa's Confederation Park, including a plywood shack and tents, were removed on Sunday after protesters co-operated with police and the park was fenced off.

Government response in question

The group is facing a proposed class-action lawsuit spearheaded by Ottawa human rights lawyer Paul Champ, who on Saturday posted a video statement saying truckers could be excluded from the lawsuit if they leave the city by Monday morning.

Organizers for the protest maintain they intend to stay in the city until the federal government lifts all restrictions related to the COVID-19 pandemic, even though most of those measures were introduced by the provinces.

The convoy began as a protest against a federal vaccine mandate for cross-border truckers, but it has developed into a larger demonstration against public health measures related to the pandemic.

WATCH / [Public safety minister discusses protests:](#)



'We do need to see that the law is enforced,' public safety minister says

16 days ago | 9:00

Minister of Public Safety Marco Mendicino tells CBC chief political correspondent Rosemary Barton that the federal government is working with local authorities and that he's been 'very troubled' by the reports from Ottawa residents of harassment and disruptions due to ongoing protests. 9:00

Public Safety Minister Marco Mendicino said in an interview that aired Sunday that he had heard people questioning whether the federal government would meet with protesters.

"We've been engaging Canadians throughout the pandemic. We put the question of vaccines and vaccine mandates on the ballot, and Canadians had a right to exercise their vote freely in the last election," he told CBC chief political correspondent Rosemary Barton on [Rosemary Barton Live](#).

"We do need to see that the laws are enforced at the end of the day. We're a country that is based on the rule of law," Mendicino said. He also hinted that support may be coming from the federal government for the city or for local businesses that have had to close their doors for the past week due to security concerns.

"I think we are working closely with the city to look at providing some support for those who have been impacted. I know that shops and businesses have been closed, and I know that those discussions are ongoing," he said.

- [Black parliamentarians say protest convoy is a venue for 'white supremacists'](#)
- [Crowds swell in downtown Ottawa again for 2nd weekend of protests](#)

The protests have also received significant rhetorical endorsements from politicians south of the border, including former U.S. president Donald Trump. Ottawa police say they are aware of American funding for the protests as well.

"This is no place for Americans to involve themselves in these kinds of activities," Bruce Heyman, a former U.S. ambassador to Canada, told CBC News on Sunday.

The Ottawa police force also noted on Sunday that it is "actively working with Canadian, U.S. and international security agencies ... to investigate email-based threats to public officials."

Finances in flux

On Friday, crowdfunding platform GoFundMe announced it would be stopping payments through the main convoy fundraising page, which by then had received more than \$10 million in donations.

The company deleted the fundraising page from its website, saying the protest violates a rule in its terms of service that prohibits the promotion of violence and harassment.

Along with the disruption caused by blockages and noise, protesters have displayed symbols of hate, including the Confederate flag and swastikas.

Convoy organizers have instead pointed potential donors toward a Christian fundraising site. As of Sunday morning, organizers had received more than \$2.5 million US in donations on that site.

With files from Joanne Chianello, Travis Dhanraj and Peter Zimonjic

Visitez [Radio-Canada.ca](https://radio-canada.ca)

This is **EXHIBIT “DD”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S", positioned above a horizontal line.

Janani Shanmuganathan



[Français](#)

Emergency Management and Civil Protection Act

ONTARIO REGULATION 70/22

CONFIRMATION OF DECLARATION OF EMERGENCY

Consolidation Period: From February 12, 2022 to the [e-Laws currency date](#).

No amendments.

This is the English version of a bilingual regulation.

WHEREAS the interference with transportation infrastructure, including essential trade corridors, and other critical infrastructure that is currently occurring in locations throughout the Province prevents the movement of people and the delivery of essential goods and services and constitutes a danger of major proportions that could result in serious harm to persons and substantial damage to property;

AND WHEREAS the criteria set out in subsection 7.0.1 (3) of the *Act* have been satisfied;

NOW THEREFORE, the declaration of emergency made by the Premier on February 11, 2022 at 3:46 p.m. is hereby confirmed pursuant to section 7.0.1 of the *Act* in the whole of the Province of Ontario.

[Français](#)

This is **EXHIBIT “E”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

A handwritten signature in cursive script, reading "Janani S".

Janani Shanmuganathan

Report to the Houses of Parliament: *Emergencies Act* Consultations

February 16, 2022

Report to the Houses of Parliament: *Emergencies Act* Consultations

Background and the Requirement to Consult

On February 14, 2022, the Governor in Council declared a public order emergency under the *Emergencies Act*. Section 25 of the Act requires the Governor in Council to consult the Lieutenant Governor in Council of each province with respect to a proposal to declare a public order emergency. A report of these consultations must be laid before each House of Parliament within seven sitting days after the declaration is issued, in accordance with section 58 of the Act.

Engagement

Since the crisis began in late January, federal ministers and officials have continuously engaged provinces and territories, municipalities, and law enforcement agencies to assess the situation and to offer the support and assistance of the Government of Canada. Staff in the Prime Minister's Office and in various Minister's offices had ongoing communications with Premiers' offices and related ministers' offices throughout this period. Examples of engagement with provincial, municipal, and international partners include the following:

- There has been regular engagement with the City of Ottawa in relation to requests for federal support. This includes the request from the City of Ottawa for policing services (February 7, 2022 letter to the Prime Minister from the Ottawa Mayor and the Chair of the Ottawa Police Services Board).
 - The Prime Minister spoke to the Mayor of Ottawa on January 31 and February 8, 2022 about the illegal occupation in Ottawa.
 - Trilateral meetings took place on February 7, 8, and 10, 2022 with the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness, the Minister of Public Safety, the Mayor of Ottawa, the City Manager of Ottawa, and the Chief of Ottawa Police Services. The Minister also spoke with the Solicitor General of Ontario on February 7, 2022 to discuss the work of the tripartite table.
 - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness have been in regular contact with the Office of the Premier of Ontario, as well as the Deputy Mayor of Ottawa.
 - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Canadian Association of Chiefs of Police on February 3 and 13, 2022 on support for the Ottawa Police Service.
 - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness also spoke with the President of the Federation of Canadian Municipalities on February 3, 2022 about the situation in Ottawa.
- There has also been regular engagement with municipal and provincial officials concerning the Ambassador Bridge, including on a request for assistance received from the City of Windsor on February 9, 2022.

- The Prime Minister spoke with the Premier of Ontario on February 9, 2022, and the Minister of Intergovernmental Affairs, Infrastructure and Communities spoke with the Premier of Ontario (February 10 and 11, 2022) regarding measures being taken by the Province in relation to the Ambassador Bridge.
 - The Prime Minister spoke to the Mayor of Windsor on February 10, 2022 about the blockade at the Ambassador Bridge.
 - The Prime Minister spoke with the President of the United States on February 11, 2022. The leaders discussed the critical importance of resolving access to the Ambassador Bridge and other ports of entry as quickly as possible.
 - The Minister of Transport spoke with Ontario's Minister of Transportation on February 9, 2022 about the blockades at border crossings. The Minister also spoke with the Mayor of Windsor on February 11, 2022 concerning the Ambassador Bridge.
 - Staff from the Office of the President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness and the Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities have also been in regular contact with the City of Windsor.
- The Minister of Public Safety engaged the Premier of Ontario on February 9, 2022. The Minister has also been in regular contact with the Mayor of Ottawa and the Mayor of Windsor, including through the tripartite discussions. His staff have also engaged with both Mayors' offices. The Office of the Minister of Intergovernmental Affairs, Infrastructure and Communities engaged the Office of the Minister of Transportation of Ontario on February 7, 2022, and was in regular contact with the Office of the Premier of Ontario.
 - The Office of the Prime Minister has also had ongoing discussions with the Office of the Premier of Ontario regarding the Ottawa, Windsor, and Sarnia blockades in the weeks leading up to the declaration. These conversations made it clear that more federal support was needed.
 - There has been regular engagement with provincial officials concerning the Coutts port of entry, including the Province's request for assistance in relation to tow truck capacity (February 5, 2022 letter to Ministers of Public Safety and Emergency Preparedness from the Alberta Minister of Municipal Affairs).
 - The Minister of Public Safety engaged with the Premier of Alberta on February 2 and 9, 2022, and with the Premier and the Acting Minister of Justice and Solicitor General of Alberta on February 7, 2022. The Minister also engaged the Acting Minister of Justice and Solicitor General of Alberta on February 1, 5, and 9, 2022.
 - The Minister of Transport spoke with Alberta's Minister of Transportation on February 5 and 9, 2022.
 - The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with the Premier of Alberta on February 10 and 11, 2022.

- Ministers also engaged counterparts in other provinces:
 - The Minister of Transport spoke with Manitoba's Minister of Transportation and Infrastructure on February 12, 2022 concerning the Emerson port of entry.
 - The President of the Queen's Privy Council for Canada and Minister of Emergency Preparedness spoke with the Minister of Public Safety and Solicitor General and Deputy Premier of British Columbia on February 5 and 13, 2022 to discuss protests in Victoria and how the federal government could assist if circumstances required, including mutual emergency legislation.
 - In support of his Cabinet colleagues and on behalf of the Prime Minister, the Minister of Intergovernmental Affairs, Infrastructure and Communities also communicated with the premiers of Nova Scotia (February 12, 2022), New Brunswick (February 12, 2022), Newfoundland and Labrador (February 12, 2022), and British Columbia (February 13, 2022) to ask about the current status and to offer federal support to help the provinces respond to the disruption and blockades.

Federal, provincial, and territorial (FPT) officials have also met on a multilateral and bilateral basis, including the following:

- Public Safety Canada officials shared information on the ongoing situation and the use of authorities. This included:
 - The FPT Crime Prevention and Policing Committee (CPPC) held an ad hoc meeting on February 7, 2022 at the deputy minister level.
 - The FPT CPPC Committee met at the assistant deputy minister level on February 1 and 11, 2022.
 - Discussions took place with assistant deputy ministers from Ontario, Manitoba, and Alberta on February 13, 2022, and with Ontario and Manitoba on February 14, 2022.
- Transport Canada officials gathered and shared information with PT transport ministries on PT tools/actions being considered to manage the convoys, including potential infraction and enforcement regimes under the respective jurisdictions' motor vehicle safety legislation. This included:
 - The ADM-level table of the Council of Ministers Responsible for Transportation and Highway Safety met twice, on February 4 and 8, 2022.
 - Calls took place with Alberta and Ontario on February 5, 2022, with Ontario on February 6 and 7, 2022, and with Alberta on February 7, 2022.

The Government of Canada also engaged Indigenous leaders regarding the blockades. For example, the Minister of Crown-Indigenous Relations spoke with the National Chief of the Assembly of First Nations, the President of the Inuit Tapiriit Kanatami, the President of the Métis National Council, the Grand Chief of Akwesasne, and the Grand Chief of the Manitoba Southern Chief's Organization.

The decisions on next steps and to consult premiers on the *Emergencies Act* was informed by all of the federal ministerial and senior official engagement with provinces since the onset of the crisis.

Consultations on the Emergencies Act with First Ministers

The Prime Minister convened a First Ministers' Meeting on February 14, 2022, to consult premiers on whether to declare a public order emergency under the *Emergencies Act*. The Prime Minister was joined by the Minister of Intergovernmental Affairs, Infrastructure and Communities, the Minister of Justice and Attorney General of Canada, and the Minister of Public Safety. All premiers participated.

The Prime Minister explained why the declaration of a public order emergency might be necessary and formally consulted premiers. The Minister of Justice outlined potential measures the Government of Canada was contemplating to take under the *Emergencies Act* to supplement the measures in the provinces' jurisdiction and respond to the urgent and unprecedented situation. The Prime Minister asked what measures could be supplemented through the *Emergencies Act* by using proportional, time-limited authorities.

Each premier was given the opportunity to provide his/her perspectives on the current situation – both nationally and in their own jurisdiction – and whether a declaration of public order emergency should be issued. A variety of views and perspectives were shared at the meeting. Some premiers indicated support for the proposed measures as necessary to resolve the current situation, noting they would be focused on targeted areas, time-limited, and would be subject to ongoing engagement. Other premiers did not feel the *Emergencies Act* was needed at this time, arguing that provincial and municipal governments have sufficient authority to address the situation in their respective jurisdictions. Some premiers expressed caution that invoking the *Emergencies Act* could escalate the situation.

While the views expressed at the First Ministers' Meeting were shared in confidence, premiers provided their perspectives in public statements following the First Ministers' Meeting.

- The Premier of Ontario said he supports the federal government's decision to provide additional tools to help police resolve the situation in the nation's capital. He said he expressed to the Prime Minister that these measures should be targeted and time-limited.
- The Premier of Newfoundland and Labrador said that he supports invoking the *Emergencies Act* on a time limited basis to bolster the response to deal with unacceptable behaviour within blockades, infringing on the rights of law-abiding Canadians.
- British Columbia's Minister of Public Safety and Solicitor General and Deputy Premier also said that the Province supported the use of the *Emergencies Act*, according to media reports.
- The Premier of Quebec said that he opposed the application of the *Emergencies Act* in Quebec, stating that municipal police and the Sûreté du Québec have control of the situation, and arguing that the use of the Act would be divisive.
- The Premier of Alberta tweeted that Alberta's Government is opposed to the invocation of the *Emergencies Act*, arguing that Alberta has all the legal tools and operational resources required to

maintain order. He also expressed concern that invocation of the *Emergencies Act* could escalate a tense situation.

- The Premier of Saskatchewan issued the following tweet: “The illegal blockades must end, but police already have sufficient tools to enforce the law and clear the blockades, as they did over the weekend in Windsor. Therefore, Saskatchewan does not support the Trudeau government invoking the *Emergencies Act*. If the federal government does proceed with this measure, I would hope it would only be invoked in provinces that request it, as the legislation allows.”
- The Premier of Manitoba issued a statement in which she noted that the situation in each province and territory is very different and she is not currently satisfied the *Emergencies Act* should be applied in Manitoba. She said that in her view, the sweeping effects and signals associated with the never-before-used *Emergencies Act* are not constructive in Manitoba, where caution must be taken against overreach and unintended negative consequences.
- The Premier of New Brunswick, the Premier of Nova Scotia, and the Premier of Prince Edward Island have also commented that they do not believe the *Emergencies Act* is necessary in their respective provinces, stating that policing services have sufficient authority to enforce the law.
- The premiers of Yukon, the Northwest Territories, and Nunavut provided feedback during the First Ministers’ Meeting, although have not issued public statements.

During the First Ministers’ Meeting, the Prime Minister emphasized that a final decision had not yet been made, and that the discussion amongst First Ministers would inform the Government of Canada’s decision.

There was further engagement with provinces following the First Ministers’ Meeting and prior to the Government of Canada’s decision to declare a public order emergency on February 14, 2022:

- The Office of the Prime Minister spoke with the Office of the Premier of British Columbia, as Chair of the Council of the Federation, before the Government of Canada’s decision was made on February 14, 2022 to offer briefings to premiers’ offices, and to explain the role of provinces and territories under the *Emergencies Act*.
- The Minister of Intergovernmental Affairs, Infrastructure and Communities communicated with his Quebec counterpart on the *Emergencies Act*. The Minister of Canadian Heritage and Quebec Lieutenant also connected with Quebec’s Deputy Premier and Minister of Public Safety and Quebec’s Minister of Finance, and officials from the Prime Minister’s Office engaged with the Office of the Premier of Quebec.
- The Minister of Intergovernmental Affairs, Infrastructure and Communities also engaged the Premier of Ontario and received feedback from the Premier of Saskatchewan.
- The Office of the Prime Minister spoke with the Office of the Premier of Ontario and the Office of the Premier of Newfoundland and Labrador on February 14, 2022 to explain the rationale and implementation of the *Emergencies Act*.

The Prime Minister considered all of the comments shared at the First Ministers' Meeting, as well as the many other sources of information and intelligence. He announced his intention to invoke the *Emergencies Act* with targeted, time-limited measures that would complement provincial and municipal authorities late in the day on February 14, 2022.

On February 15, 2022 the Prime Minister wrote to all premiers, outlining the reasons why the Government of Canada decided to declare a public order emergency and described the types of measures that would be available under the Act. The letter responded to issues raised during the discussion, particularly on whether the declaration of a public order emergency should apply nationally. For example, the letter emphasized that the measures would be applied to targeted areas; that measures would supplement, rather than replace, provincial and municipal authorities; that these are tools that could be employed by police of local jurisdiction, at their discretion; and that the Royal Canadian Mounted Police would be engaged only when requested by local authorities. The letter also emphasized the Government of Canada's strong interest in further engagement and collaboration with provinces and territories on these issues.

Next Steps

Consistent with the *Emergencies Act's* requirements, the Government of Canada is committed to ongoing consultation and collaboration with the provinces and territories to ensure that the federal response complements the efforts of their governments. Ongoing consultation will also be necessary should there be a need to modify or extend existing orders under the *Emergencies Act*.

Supported by their officials, Ministers engaged with their counterparts following the First Ministers' Meeting, and will continue to engage provinces and territories on an ongoing basis. They will be available to quickly respond to specific issues or situations, as they arise. More recent engagement includes:

- The Minister of Justice and Attorney General of Canada spoke with his Quebec counterpart on February 14, 2022 about the *Emergencies Act*.
- The Minister of Transport spoke with British Columbia's Minister of Transportation and Infrastructure on February 14, 2022 about blockades at border crossings. The Ministers discussed how the *Emergencies Act* can assist law enforcement.
- The Minister of Transport spoke with Nova Scotia's Minister of Public Works on February 15, 2022 and provided an overview of the emergency measures being taken under the *Emergencies Act*.
- On February 15, 2022, representatives from the Justice Minister's Office spoke with the Mayor of Winnipeg about the *Emergencies Act*. In a statement on February 15, 2022, the Mayor said he is grateful the federal government is "taking action to make additional tools available to assist with the quick and peaceful end to the unlawful occupations."
- A briefing for PT Deputy Ministers of Intergovernmental Affairs took place on February 15, 2022. A follow-up meeting is scheduled for February 17, 2022. FPT Deputy Ministers of Intergovernmental Affairs will continue to engage on these issues through regular and ongoing communications.

- A briefing is planned for February 16, 2022 for Assistant Deputy Ministers in provincial and territorial ministries of Public Safety, Transportation, the Solicitor General, and Intergovernmental Affairs.
- Collaboration through policing services will also continue. On February 15, 2022, the Interim Chief of the Ottawa Police Service stated that with new resources from policing partners and tools from both the provincial and federal governments, the Ottawa Police Service believe they now have the resources and power to bring a safe end to this occupation. Ottawa's Deputy Police Chief further commented that there is collaboration on the application of the *Emergencies Act* in Ottawa.
- There will be weekly engagement by the Minister of Public Safety with his provincial and territorial counterparts.

The Government of Canada will continue to gather and assess feedback through these ongoing engagements to assess the orders and regulations under the *Emergencies Act* and to ensure a coordinated and effective response on behalf of Canadians.

Annex:

- Letter from the Prime Minister to premiers

This is **EXHIBIT “EE”**
to the Affidavit of
MADELEINE ROSS
sworn before me by video conference
this 22nd day of February, 2022.



Janani Shanmuganathan



Français

Emergency Management and Civil Protection Act

ONTARIO REGULATION 71/22

CRITICAL INFRASTRUCTURE AND HIGHWAYS

Consolidation Period: From February 14, 2022 to the e-Laws currency date.

Note: This Order is revoked on February 26, 2022, unless it is extended. (See s. 7.0.8 of the Act)

Last amendment: 74/22.

Legislative History: [+]

This is the English version of a bilingual regulation.

1. The terms of this Order are set out in Schedule 1.

SCHEDULE 1
CRITICAL INFRASTRUCTURE AND HIGHWAYS

Interpretation

1. In this Order,

“critical infrastructure” means,

- (a) 400-series highways,
- (b) airports,
- (c) canals,
- (d) hospitals,
- (e) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications,
- (f) international and interprovincial bridges and crossings,
- (g) locations where COVID-19 vaccines are administered,
- (h) ports,
- (i) power generation and transmission facilities, and
- (j) railways; (“infrastructures essentielles”)

“provincial offences officer” has the same meaning as in subsection 1 (1) of the *Provincial Offences Act*. (“agent des infractions provinciales”)

Impeding access or egress re critical infrastructure

2. (1) No person, whether acting individually or in cooperation with others, and whether through the use of a motor vehicle or by any other means, shall,

- (a) impede access to or egress from, or the ordinary use of, critical infrastructure; or
- (b) directly or indirectly cause such access, egress or ordinary use to be impeded.

(2) No person shall provide assistance to an individual to knowingly aid the individual to do anything prohibited by subsection (1), including by providing supplies, fuel or other materials.

Impeding access or egress re highways

3. (1) No person shall impede access to or egress from, or the ordinary use of, any highway, walkway or bridge where such impediment has the effect of,

- (a) preventing the delivery of essential goods or services;
- (b) severely disrupting ordinary economic activity; or

(c) causing a serious interference with the safety, health or well-being of members of the public.

(2) For greater certainty, subsection (1) does not prohibit an impediment that is trivial, transient, or minor in nature or where users of the highway, walkway or bridge can easily avoid the impediment.

(3) In this section,

“highway” means a highway as defined in the *Highway Traffic Act*, other than a 400-series highway.

Order

4. (1) A police officer or other provincial offences officer who has reasonable grounds to believe that one or more individuals are in contravention of section 2 or 3 may,

- (a) order the individual to cease contravening the section;
- (b) where there is more than one individual, order the individuals to disperse; and
- (c) order the individual to remove any object that the individual used in the contravention, whether the object was used in the contravention before or after this Order takes effect.

(2) Every individual to whom an order is issued under subsection (1) shall promptly comply with it.

(3) If an individual fails to promptly remove an object after being ordered to do so under clause (1) (c), then a police officer or other provincial offences officer may remove the object or cause it to be removed.

Order re removal of vehicle

5. (1) Where a vehicle owned or operated by an owner or operator is used in the contravention of section 2 or 3, the Registrar, a police officer or other provincial offences officer may order the owner or operator to remove the vehicle.

(2) Notice of an order made under subsection (1) may be given by any means that the person giving notice believes may be reasonable to bring the order to the attention of the owner or operator.

(3) An owner or operator who receives notice of an order made under subsection (1) shall promptly cause the vehicle to be removed.

(4) If an owner or operator fails to comply with subsection (3), a police officer or other provincial offences officer may remove the vehicle or cause it to be removed.

(5) For the purposes of this section,

“operator” means,

- (a) an operator as defined in subsection 16 (1) of the *Highway Traffic Act*, or
- (b) in the absence of evidence to the contrary, where there is no CVOR certificate, national safety code number under the *Motor Vehicle Transport Act* (Canada), or lease applicable to the vehicle, the holder of the plate portion of the permit for the vehicle; (“utilisateur”)

“owner” includes,

- (a) the holder of a permit as defined in section 6 of the *Highway Traffic Act*, and
- (b) the holder of the permit corresponding to the number plate issued under section 7 of the *Highway Traffic Act* that is displayed on the vehicle. (“propriétaire”)

Detention, storage of removed objects

5.1 (1) A police officer or other provincial offences officer who removes an object or causes it to be removed under subsection 4 (3) or 5 (4) may detain and store the object or cause it to be detained and stored for as long as this Order is in effect and shall make reasonable efforts to notify the owner of the object of the location where the object is detained and stored.

(2) The costs and charges for the removal, detention and storage of the object are a debt due,

- (a) if the object is a vehicle, by the owner of the vehicle, the operator of the vehicle and the person who last drove the vehicle before it was removed, for which they are jointly and severally liable;
- (b) if the object is not a vehicle, by the owner of the object and the person who most recently used the object in the contravention of section 2 or 3 before it was removed, for which they are jointly and severally liable.

(3) A debt under subsection (2) may be recovered in any court of competent jurisdiction and is a lien upon the object, which may be enforced in the manner

provided by the *Repair and Storage Liens Act*.

(4) Any person who is reasonably qualified to assist in the removing, detention or storage of vehicles or other objects, is authorized to perform such activities if requested by a police officer or other provincial offences officer.

(5) For the purposes of this section,

“operator” means,

- (a) an operator as defined in subsection 16 (1) of the *Highway Traffic Act*, or
- (b) in the absence of evidence to the contrary, where there is no CVOR certificate, national safety code number under the *Motor Vehicle Transport Act* (Canada), or lease applicable to the vehicle, the holder of the plate portion of the permit for the vehicle; (“utilisateur”)

“owner” includes,

- (a) the holder of a permit as defined in section 6 of the *Highway Traffic Act*, and
- (b) the holder of the permit corresponding to the number plate issued under section 7 of the *Highway Traffic Act* that is displayed on the vehicle. (“propriétaire”)

Permits, licences and certificates under the *Highway Traffic Act*

6. (1) Despite anything in the *Highway Traffic Act*, where the Registrar or Deputy Registrar believes on reasonable grounds that,

- (a) the holder of a driver's licence, motor vehicle permit or CVOR certificate has contravened section 2 or 3 or has failed to comply with subsection 4 (2) or 5 (3); or
- (b) the holder of a CVOR certificate was the operator of a motor vehicle that was used in or during a contravention of section 2 or 3,

the Registrar or Deputy Registrar may, by order, suspend or cancel the driver's licence, plate portion of the permit or CVOR certificate.

(2) A person has no right to be heard before the Registrar or Deputy Registrar makes an order under subsection (1).

(3) The Registrar or Deputy Registrar may give or provide notice of an order made under subsection (1) by any means that the Registrar or Deputy Registrar believes may be reasonable to bring the order to the attention of the person affected.

(4) An order made under subsection (1) takes effect on the date and at the time set out in the order, whether or not the person affected has received notice of the order.

(5) If the permit for a motor vehicle has been suspended or cancelled by an order made under subsection (1), a police officer or other provincial offences officer may seize any number plates displayed on a motor vehicle, including any number plates issued by another jurisdiction.

(6) In this section,

“CVOR certificate” has the same meaning as in section 1 of the *Highway Traffic Act*; (“certificat d'immatriculation UVU”)

“driver's licence” has the same meaning as in section 1 of the *Highway Traffic Act*, and includes a driver's licence issued by another jurisdiction; (“permis de conduire”)

“operator” has the same meaning as in subsection 16 (1) of the *Highway Traffic Act*; (“utilisateur”)

“permit” has the same meaning as in section 6 of the *Highway Traffic Act*, and includes a permit issued by another jurisdiction; (“certificat d'immatriculation”)

“Registrar” and “Deputy Registrar” mean the Registrar of Motor Vehicles and any Deputy Registrar of Motor Vehicles appointed under the *Highway Traffic Act*. (“registrator”, “registrator adjoint”)

O. Reg. 74/22, s. 1.

Français

This is **EXHIBIT “F”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.



Janani Shanmuganathan



Jim Watson
Mayor Maire

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The Rt. Hon. Justin Trudeau
Prime Minister
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

February 7, 2022

The Hon. Marco Mendicino
Minister of Public Safety
269 Laurier Avenue, West
Ottawa, ON K1A 0P8

Prime Minister and Minister Mendicino,

As you know, the City of Ottawa is facing unprecedented, unlawful demonstrations that are threatening the safety of the Ottawa community and our federal parliamentary institutions. The Ottawa Police Service has been doing everything in its power to bring this demonstration to a safe and peaceful end as quickly and safely as possible.

What was initially described as a peaceful protest has now turned into a siege of our downtown area. As of today, there are currently between 400 and 500 trucks occupying Ottawa's downtown core. The City's by-law officers have issued over 1000 tickets and remain vigilant in enforcement activities. Ottawa City Council is holding a special meeting to consider several motions to address this unprecedented situation.

At first, this was labeled as a protest against the public health policies that democratically elected governments at the provincial and federal levels have enacted to protect us from the deadly COVID-19 pandemic.

But sadly, the demonstration has turned into an aggressive and hateful occupation of our neighbourhoods, which has nothing to do with the truckers' quarrel against vaccine mandates enacted by the Government of Canada, the Province of Ontario and municipal governments.

Let's not forget the words and symbols of hatred that we have witnessed throughout this occupation: Confederate flags, Nazi flags, racial and homophobic harassment towards our own residents – in a city that rightfully prides itself on being caring and compassionate.



These acts and the occupation are having damaging and long-term impacts on the well-being of our residents.

People are living in fear and are terrified – and they've now been subjected to the non-stop honking of large trucks for nine days, which is tantamount to psychological warfare.

Although we are grateful for and have started to welcome the additional officers on loan to the City from the RCMP, the OPP and other forces, we need a dramatic and immediate injection of additional officers.

Given the scope and scale of the armada of large trucks that are now occupying our downtown core, we are writing to you today to ask that you work to help the City secure 1800 officers to quell the insurrection that the Ottawa Police Service is not able to contain.

The following resources are required on an urgent basis: 1000 regular officers, 600 public order officers, 100 investigative officers, 100 civilian staff, and all supporting resources. This includes, cyber investigative capacity, digital and social media forensics, and financial forensics.

We ask the Government of Canada and the Province of Ontario to work with us to secure this combined officer surge from the Government of Canada, the Province of Ontario and municipal police forces willing to participate from Ontario and other provinces.

We must do everything in our power to take back the streets of Ottawa, and our parliamentary precinct, from the criminal activity and hooliganism that has transpired over the last nine days

We need your help to end this siege in the heart of our nation's capital and in our residential neighbourhoods, and to regain control of our city.

Our hope is that your department can help coordinate a response that matches the scale of the challenge we are facing.

We can contain the occupation, but we cannot end it without your support.

Sincerely,

Jim Watson
Mayor
City of Ottawa

Councillor Diane Deans
Chair
Ottawa Police Services Board

This is **EXHIBIT “FF”**
to the Affidavit of
MADELEINE ROSS
sworn before me by video conference
this 22nd day of February, 2022.



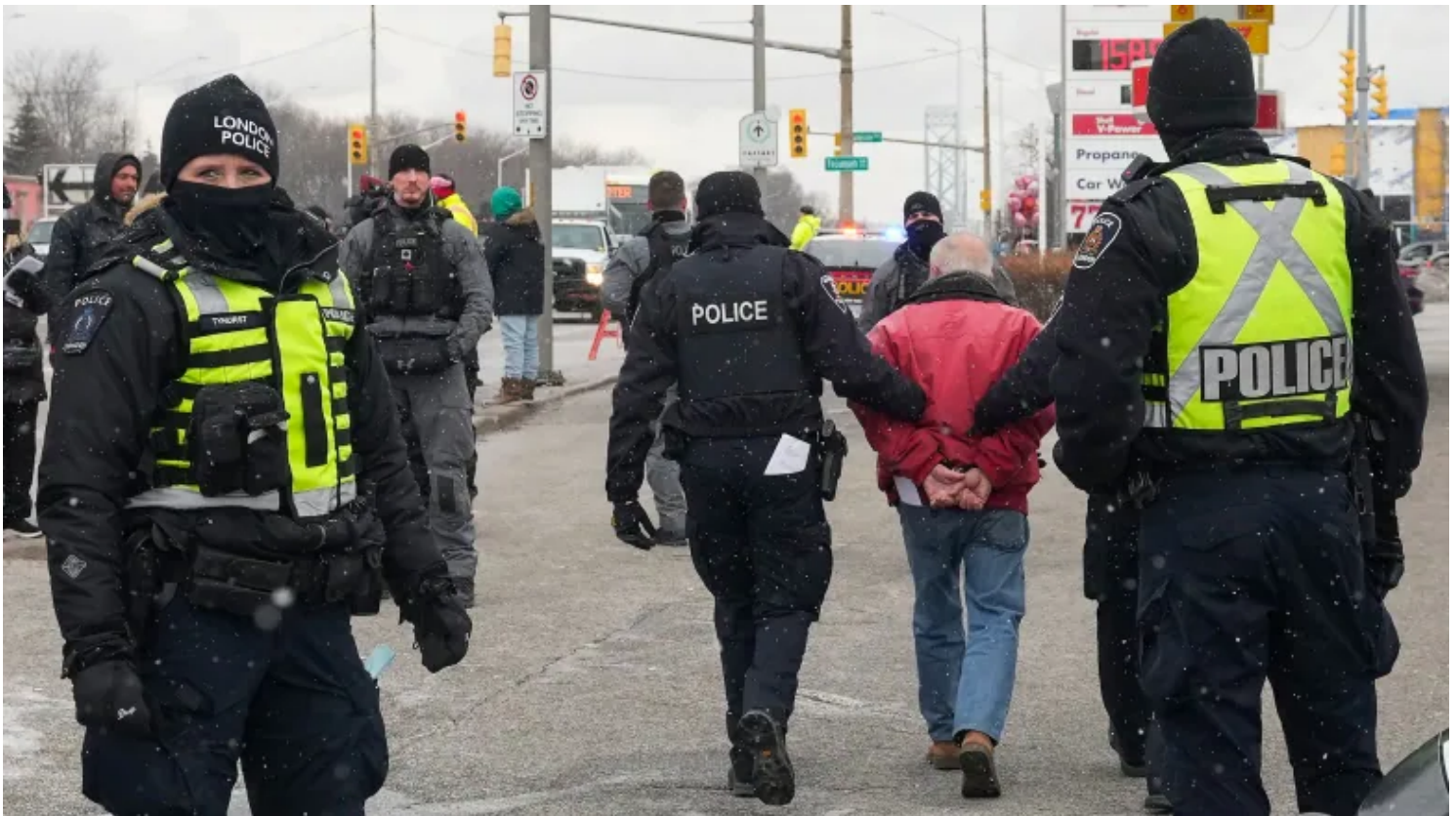
Janani Shanmuganathan

Windsor

Charges from Ambassador Bridge protest in Windsor, Ont., now up to 90

Unclear if any of the charges are related to the federal Emergencies Act invoked Monday

[Kaitie Fraser](#) · CBC News · Posted: Feb 15, 2022 4:05 PM ET | Last Updated: February 15



A protester is arrested Sunday as police worked to clear people from the area of the Ambassador Bridge in Windsor, Ont. Police said Tuesday that 90 charges have been laid in relation to the protests, which prevented bridge use between Ontario-Michigan for a week. (Nathan Denette/The Canadian Press)

[comments](#)

Dozens of charges have now been laid in relation to pandemic mandate protests in Windsor, Ont., that blocked Ambassador Bridge traffic, police said in releasing the latest figures a day after the Emergencies Act came into effect.

At least 46 people face a total of 90 charges in the bridge blockade, which started Feb. 7 and ended Sunday, police said Tuesday.

However, it's unclear if any of the charges stem from the federal act coming into force. CBC reached out to Windsor police for more details, but they said they weren't immediately available.

Prime Minister Justin Trudeau and his cabinet [brought the Emergencies Act](#) into effect Monday, giving more power to the federal government during a crisis. Trudeau said under the act, police are given more tools and the federal government is able to impose fines of up to \$5,000 for breaking the law, pursue imprisonment not exceeding five years, or both.

RCMP are also permitted to enforce municipal bylaws and provincial offences, which is unusual as the RCMP does not normally carry out policing functions in Ontario.

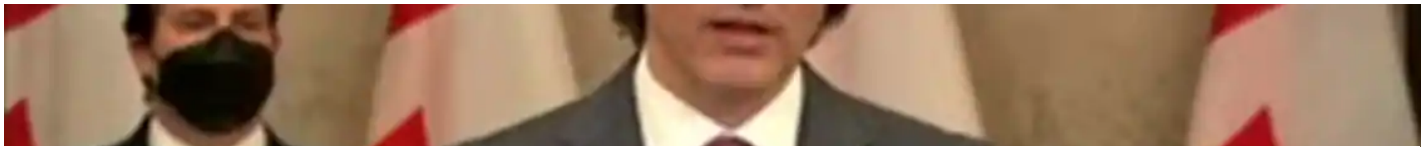
- **READ MORE | [The federal government has invoked the Emergencies Act. Here's what that means](#)**

Cabinet is also directing banks and financial institutions to halt the flow of funds to protest organizers.

"We have been there to support local police of jurisdiction and we are now putting forward fresh tools to do that," said Trudeau.

WATCH | Trudeau says Windsor, Ont., protests a factor in triggering Emergencies Act:





Trudeau says border blockade impacts a main reason for triggering Emergencies Act

7 days ago | 1:02

Prime Minister Justin Trudeau says Ambassador Bridge blockade in Windsor, Ont. was a reason behind invoking Emergencies Act. 1:02

What's unclear is if the legislation may affect any of the dozens of protesters who've already been charged in the Ambassador Bridge blockade. Police enforced an injunction from an Ontario court on the weekend, leading to the [reopening of the bridge on Monday](#).

- [Federal government invokes Emergencies Act for first time ever in response to protests, blockades](#)

Of the 90 charges, some individuals may face more than one count.

Here's a breakdown of what we know so far:

- 43 people charged with breaching a court order.
- 43 people charged with mischief over \$5,000.
- One person charged with obstructing justice.
- One person charged with failing to attend court.
- One person charged with dangerous driving.
- One person is facing a Highway Traffic Act Charge for failing to remain.

Charges may be barrier to entering U.S.: lawyer

The charges could be a concern for people trying to cross the border, according to Windsor immigration lawyer Eddie Kadri.

"If criminal charges are going to be pursued and convictions are secured — if those convictions equate to crimes of moral turpitude — then they're going to have barriers of entrance into the United States," said Kadri.

"Even with a criminal charge but not a conviction, if they do attempt to cross into the United States, and the U.S. becomes aware of that charge, that charge stays on your record, it doesn't get removed or expunged from the U.S. system."

People must disclose information, including any charges against them, if asked by a border officer, said Kadri. While many charges may not fit the U.S.'s definition of "moral turpitude," Kadri said a wide range of crimes could be included.

"The element of criminal charges here really changes the game for some of these people, specially for those whose livelihoods depends on crossing the border."

- [**City of Windsor declares state of emergency over Ambassador Bridge protests**](#)

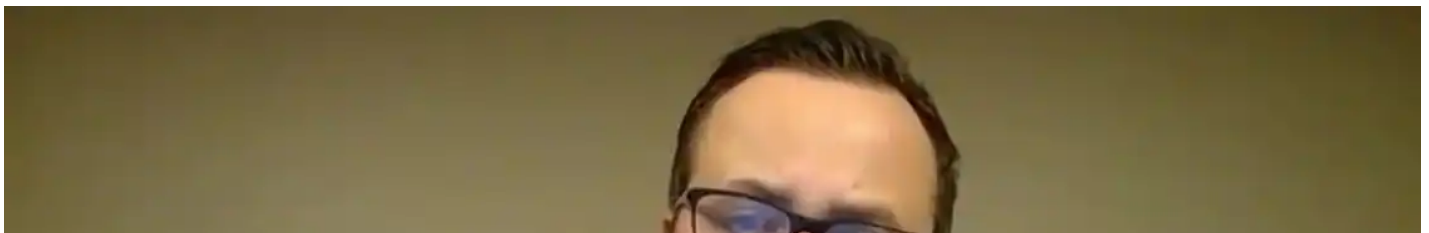
Kadri said people can pursue waivers to be able to cross the border again, but they'd need to do that for their entire lives to be admitted to the U.S.

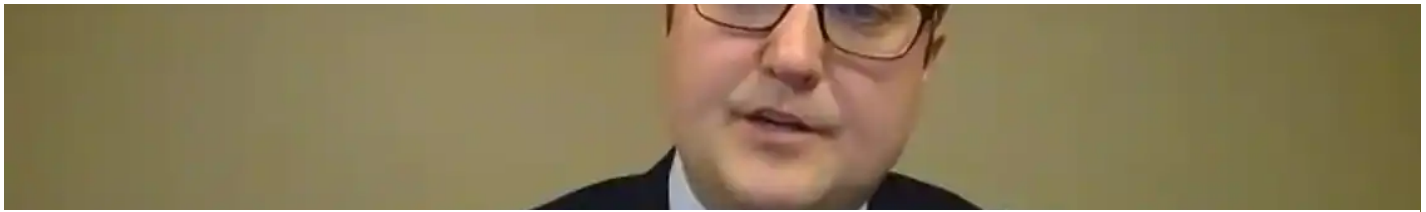
Windsor—Tecumseh Liberal MP Irek Kusmierczyk said that's something that could happen whether or not individuals are charged under the Emergencies Act.

"If Canadians undertake unlawful behaviour — even before the Emergencies Act — they're subject to certain penalties and consequences, and often times one of those consequences is if they have a criminal record, or if they have been convicted of unlawful behaviour, they may not be permitted into Canada or into the United States for example, and vice versa," he said to CBC News.

"Part of the Emergencies Act that is being implemented here is to introduce additional penalties and additional authorities for all levels of government."

WATCH | Kusmierczyk says Emergencies Act meant to protect people, the economy:





Windsor-Tecumseh MP explains Emergencies Act

7 days ago | 0:56

Liberal MP Irek Kusmierczyk explains the purpose of invoking the Emergencies Act, saying the primary goal is 'to restore the rule of law.' 0:56

When asked what prompted him to decide to invoke the never-before used legislation now, Trudeau said: "For me, the conversations I had with our Windsor MP, Irek Kusmierczyk, who was talking about the impact of the disruption of the Ambassador bridge almost as soon as it started happening. The impact on workers in the auto sector in the Windsor area and up the supply chain in southern Ontario

"The direct impact hurting the exact people these convoy protesters are purporting to represent."

Border must be treated with 'gravity,' MP says

Kusmierczyk explained the act is meant to target certain areas or infrastructure, like the Ambassador Bridge, to protect from future protests or blockades. Since the protest took place on a municipal road, jurisdiction fell to the City of Windsor, while the act now allows for RCMP to step in more quickly, he said.

"As we've seen over the last few days, the border and any interruption of the border is a national security issue and as such we must treat it with the gravity it requires," he said.

It's something Windsor Mayor Drew Dilkens is also watching for, as the federal government releases more details on the act.

Areas around the former protest site near the Ambassador Bridge have [remained closed off by police](#), and the city is in a "heightened state of alert," over concerns protesters may return, said Dilkens.

"For those folks who live in the City of Windsor, this is not a pleasant experience now," he said Monday, explaining the effects of the blocked roadway.

The mayor said he wants to see solutions to open the roadway for municipal use, calling the bridge closure "not a Windsor-Essex issue" but a "national issue."

WATCH | Mayor says Windsor is in a 'heightened state of emergency':



Windsor, Ont., in 'heightened state of alert' after bridge blockade, says mayor

7 days ago | 6:30

Mayor Drew Dilkens of Windsor, Ont., hopes the federal Emergencies Act will allow the quick deployment of police to protect the country's vital infrastructure from the kind of blockade that happened at the Ambassador Bridge. 6:30

With files from John Paul Tasker, Dale Molnar, Tony Doucette

This is **EXHIBIT “G”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.

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Janani Shanmuganathan



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Charges laid in relation to unlawful protest in Ottawa

Posted On Sunday February 20, 2022

Like 589

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[Subscribe](#)

FOR IMMEDIATE RELEASE: Sunday, February 20, 2022 9:35 am

(Ottawa) –The Ottawa Police Service arrested Tyson George BILLINGS, 44 years old, of High Prairie, Alberta on February 19, 2022.

BILLINGS has been charged by the Criminal Investigations Section with:

- Mischief
- Counselling to Commit the Offence of Mischief
- Counselling to Commit the Offence of Disobey Court Order (s.127)
- Obstruct Police
- Counselling to Commit the Offence of Obstruct Police

He is scheduled to appear in court today.

The Ottawa Police issued a notice to protestors advising that anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and could be arrested.

Protestors were also informed to cease further unlawful activity, or they would face charges or fines.

- 30 -

CONTACT:

Media Relations Section

Tel: 613-236-1222, ext. 5366

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Janani Shanmuganathan

Statement from the Office of the Premier of Ontario

–
“Today, the Attorney General brought an application in the Superior Court of Justice for an order pursuant to section 490.8 of the *Criminal Code* prohibiting any person from disposing of, or otherwise dealing with, in any manner whatsoever, any and all monetary donations made through the Freedom Convoy 2022 and Adopt-a-Trucker campaign pages on the GiveSendGo online fundraising platform.

This afternoon, the order was issued. It binds any and all parties with possession or control over these donations.”

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Feedback

Ottawa Police Service Establish Integrated Command Centre to Coordinate Enforcement

Posted On Saturday February 12, 2022

Like 64

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FOR IMMEDIATE RELEASE: Saturday, February 12, 2022 8:12pm

(Ottawa) – Together with the OPP and the RCMP, the Ottawa Police Service today announced the establishment of an enhanced, Integrated Command Centre (ICC) in response to a significant influx of demonstrators into the Ottawa area and escalation of the current occupation.

In downtown Ottawa, over 4,000 demonstrators were present throughout the day. Safety concerns - arising from aggressive, illegal behaviour by many demonstrators - limited police enforcement capabilities.

We expect that the ICC will result in a significantly enhanced ability of our police service to respond to the current situation in our city. The ICC will allow us to make the most effective use of the additional resources our policing partners have provided to us.

In addition to the establishment of the ICC, the Ottawa Police Service provides the following update on operations for today:

- Due to the volume of people and vehicles in the downtown core, police safely managed the movement of various convoys in and around Ottawa. One 300 vehicle convoy and a 20-kilometer long car convoy from Quebec were safely managed.
- Interception of a fuel transport into the downtown core.
- Operationalization of the new measures announced by the Ontario Government yesterday.
- Continued planning with all levels of government to bring an end to the current occupation.

The Ottawa Police Service will continue to provide additional operational updates as appropriate.

- 30 -

CONTACT:

Media Relations Section

Tel: 613-236-1222, ext. 5366

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Charges laid in relation to Unlawful Protests in Ottawa

Posted On Saturday February 19, 2022

Like 1.1K

Tweet



[Subscribe](#)

FOR IMMEDIATE RELEASE: Saturday, February 19, 2022 7:35am

(Ottawa) –Yesterday, the Ottawa Police Service arrested Patrick James KING, 44 years old, of Red Deer, Alberta.

KING was charged by the Criminal Investigations Section with:

- Mischief
- Counselling to Commit the Offence of Mischief
- Counselling to Commit the Offence of Disobey Court Order (s.127)
- Counselling to Commit the Offence of Obstruct Police

He is scheduled to appear in court today.

This past week, the Ottawa Police issued a notice to protestors advising that anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and could be arrested.

Protestors were also informed to cease further unlawful activity, or they would face charges or fines.

- 30 -

CONTACT:

Media Relations Section

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Charge laid in relation to Unlawful Protests in Ottawa

Posted On Friday February 18, 2022

Like 1.4K

Tweet



[Subscribe](#)

FOR IMMEDIATE RELEASE: Friday, February 18, 2022 7:35 am

(Ottawa) –The Ottawa Police Service has arrested and charged Tamara LICH, 49 years old, of Medicine Hat, Alberta.

LICH has been charged with:

- Counselling to commit the offence of mischief;

She is scheduled to appear in court today.

Yesterday, the Ottawa Police issued a notice to protestors advising that anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and could be arrested.

Protestors were also informed to cease further unlawful activity, or they would face charges or fines.

- 30 -

CONTACT: Media Relations Section
Tel: 613-236-1222, ext. 5366

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Charges laid in relation to unlawful protest in Ottawa

Posted On Friday February 18, 2022

Like 106

Tweet



[Subscribe](#)

FOR IMMEDIATE RELEASE: Friday, February 18, 2022 7:20 am

(Ottawa) –The Ottawa Police Service arrested Christopher John BARBER, 46 years old, of Swift Current, Saskatchewan.

BARBER has been charged by the Criminal Investigations Section with:

- Counselling to commit the offence of mischief;
- Counselling to commit the offence of disobey court order (s. 127);
- Counselling to commit the offence of obstruct police.

He is scheduled to appear in court today.

Yesterday, the Ottawa Police issued a notice to protestors advising that anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and could be arrested.

Protestors were also informed to cease further unlawful activity, or they would face charges or fines.

- 30 -

CONTACT:

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Janani Shanmuganathan



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Update on Police Operations to Remove Unlawful Protesters

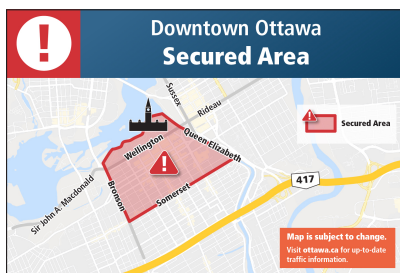
Posted On Monday February 21, 2022

Like 336

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[Subscribe](#)



Updated Secured Area map

FOR IMMEDIATE RELEASE: Monday, February 21, 2022 4:20pm

(Ottawa)— The Ottawa Police Service and its policing partners continue operations to return the Downtown Core to a state of normalcy.

Secure Area Footprint Reduced

Police have reduced the size of the Secured Area. It now includes:

- Somerset Street West to Parliament Hill
- Bronson Avenue to the Rideau Canal

The ByWard Market area is no longer in the Secured Area.

Residents and Businesses – what to expect on Tuesday

Residents can expect an increased police presence to remain in place in the coming days.

Residents may travel to the secured area if they have a lawful reason such as they live there, work there or are shopping and visiting businesses.

Police checkpoints will remain in place and you will be asked your reason for travelling within the area.

Businesses should feel safe to reopen if they had closed during the unlawful protest.

The Ottawa Police is working directly with local business improvement agencies.

Supporting local businesses is considered lawful if you are entering the Secured Area.

We would like to thank businesses and residents for their patience.

Police measures will only remain in place as long as is deemed necessary to ensure unlawful protesters do not return.

Unlawful protesters must not enter the area or they may be subject to arrest and charges.

Some unlawful protesters returned to the protest site after being arrested and they have been charged.

A Quebec man was arrested on February 18th for Obstruct Police, Mischief Obstruct Property and Mischief. He was released with no charges. One day later he was arrested for Disobey lawful order, Obstruct Police, Mischief Obstruct Property and Mischief and was released via undertaking with boundary conditions.

A woman from Southern Ontario was arrested on February 18th for Mischief. She was released with no charges. One day later, she was arrested for Disobey lawful order, Obstruct Police, Mischief Obstruct Property and Mischief and was released via undertaking with boundary conditions.

Enforcement and Charges Laid

As of 8:00 AM on February 21st, police have made 196 arrests.

Of those persons arrested, 110 were charged with various offences, including:

- Disobey Lawful Court Order
- Obstruct/Resist A Peace Officer
- Assault
- Mischief Obstruct Property
- Mischief
- Cause disturbance by Fighting/Shouting/Swearing
- Assault Police
- Dangerous Operation Motor Vehicle
- Possess Weapon

A total of 115 vehicles have been towed to date.

- 30 -

CONTACT:

Media Relations Section

Tel: 613-236-1222, ext. 5366

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Janani Shanmuganathan



Windsor Police Service News Update

Date: Wednesday, February 8, 2022

In the last 24 hours members of the Windsor Police Service have:

- Answered 344 calls to Emergency 9-1-1 phone lines
- Responded to 102 calls to 911 requiring police attendance
- Handled 337 calls for service (dispatched or officer-initiated)
- Issued 14 tickets for provincial offences (traffic and alcohol violations etc.)
- Arrested and lodged 9 prisoners in the WPS Detention Unit cells

UPDATE IN RELATION TO GATHERINGS AND DEMONSTRATIONS ON HURON CHURCH ROAD AT THE AMBASSADOR BRIDGE

On January 29, 2022, a Freedom Convoy involving those who identified as long-haul truck drivers arrived in Ottawa from across the country to protest vaccine-related border mandates imposed by the Federal Government. This mandate requires that truckers who cross the Canadian border in the United States to be vaccinated. The demonstrations have expanded to calls to end all COVID-19 vaccine mandates and gained traction, including more recently in Windsor, along Huron Church Road at the Ambassador Bridge.

The Windsor Police respects the rights of Canadians to exercise their freedom of expression and peacefully assembly. All members of the general public, road users, residents, businesses and international travelers also have the right to a safe environment. With that, we recognize the need to balance individual rights and freedoms with the need to maintain public peace and order. This is why our focus is on maintaining open communications with organizers of the demonstrations and using a reasoned, tempered approach, including the appropriate use of police discretion to guide our police personnel's responses.

The Windsor Police Service has a large police presence monitoring the demonstrations along Huron Church Rd. These activities have interrupted normal vehicle traffic flow

but we have been able to continue a limited amount of access to the Ambassador Bridge. Officers are on scene addressing traffic points, public safety and enforcement. Commercial vehicles are being redirected to the Blue Water Bridge in Sarnia. The Detroit-Windsor Tunnel remains open to non-commercial vehicles. Please avoid the area, use alternative routes and monitor our social media for updates.

The Windsor Police Service has maintained communications with main organizers but we want to urge those involved in illegal activity not to endanger members of the public or first responders, including police personnel, and jeopardize public peace. Those found committing crimes and acts of violence will be investigated and charges will be laid. This includes enforcement of traffic related offences and investigating any criminal acts. This also includes police personnel considering waiting for a lower-risk opportunity to arrest offenders rather than inflame a situation.

Chief Mizuno states "We understand the concerns of our citizens and we share those concerns. We want to reassure the public that we continue to actively engage with and monitor these demonstrations. We will maintain the peace and public/ traffic safety."

The Windsor Police Service would like to thank the public for their patience during this disruption.

For further information:

Contact the WPS Corporate Communication Unit's Public Information Officer by email at media@windsorpolice.ca

Content posted by:

Sergeant Andy Drouillard
Corporate Communications Unit
Windsor Police Service - Headquarters
Windsor, Ontario, Canada

Latest News

[February-18-2022-Update-2](#)

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Janani Shanmuganathan



Windsor Police Service News Update

Date: Friday, February 11, 2022

PUBLIC NEWS UPDATE

Message to Demonstrators from Windsor Police Service

The Windsor Police Service wants to make demonstrators clearly aware that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. The offence itself is known as mischief to property.

The unlawful act of blocking streets at and near the Ambassador Bridge is resulting in people being denied the lawful use, enjoyment and operation of their property and causing businesses to close down.

We are providing notice that anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence and must immediately cease further unlawful activity or you may face charges. You could be arrested if you are a party to the offence or assisting others in the direct or indirect commission of this offence.

Vehicles or other property related to an offence may be seized. Once a vehicle is seized, it may be detained and, following a conviction, possibly forfeited.

Charges and/or convictions related to the unlawful activity associated with the demonstration may lead to denial in crossing the USA border.

For further information:

Contact the WPS Corporate Communication Unit's Public Information Officer at (519) 255-6700 ext. 4204.

Content posted by:

Constable Talya Natyshak

Corporate Communications Unit
Windsor Police Service - Headquarters
Windsor, Ontario, Canada
Office: (519) 255-6700 ext. 4204

Latest News

[February-18-2022-Update-2](#)

[February-18-2022-Update-4](#)

[February-18-2022-Update-3](#)

[February-17-2022-Update-1](#)

[February-10-2022-Update-1](#)

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this 22nd day of February, 2022.



Janani Shanmuganathan

ONTARIO
SUPERIOR COURT OF JUSTICE

CHIEF JUSTICE GEOFFREY B. MORAWETZ)
)
) FRIDAY, THE 11TH DAY
) OF FEBRUARY, 2022

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION



Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

- and -

THE CORPORATION OF THE CITY OF WINDSOR,
ATTORNEY GENERAL FOR ONTARIO

Interveners

ORDER

THIS MOTION, made by the Plaintiff for an interim interlocutory injunction pursuant to section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure*, and section 440 of the *Municipal Act, 2001*, was heard at Windsor on February 11, 2022 by videoconference.

UPON READING the Affidavits contained within the Motion Record of the Plaintiff dated February 10, 2022, the Supplementary Motion Record of the Plaintiff dated February 11, 2022, and the Motion Record of The Corporation of the City of Windsor dated February 11, 2022,

the Affidavit of Jason Bellaire sworn February 11, 2022, the Affidavit of Jason Ward Reynar sworn February 11, 2022, the Affidavit of Adam Blake-Gallipeau sworn February 11, 2022, and the Affidavit of Dr. Clifford Rosen sworn February 11, 2022, and upon hearing oral arguments of counsel for the Automotive Parts Manufacturers' Association, The Corporation of the City of Windsor, the Attorney General of Ontario, The Democracy Fund, John Doe, and with Kristian Langenfield making oral arguments on behalf of himself, with no one attending for the Defendants or any other any person having an interest in this matter, although duly served in accordance with the Endorsement of this Court dated February 11, 2022.

1. **THIS COURT ORDERS** that the time for service, filing and confirmation of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today.

2. **THIS COURT ORDERS** that the Plaintiff is authorized to bring this Motion and the underlying proposed proceeding on behalf of all members of the Automotive Parts Manufacturers' Association pursuant to Rule 10.01(1)(f) of the *Rules of Civil Procedure*.

3. **THIS COURT ORDERS** that an interim interlocutory injunction is granted, effective February 11, 2022, at 7:00 PM, pursuant to section 101 of the *Courts of Justice Act*, Rule 40.01 of the *Rules of Civil Procedure* and section 440 of the *Municipal Act, 2001*.

4. **THIS COURT ORDERS** that the Defendants and any persons having notice of this Order are hereby restrained and enjoined from impeding or blocking access to the Ambassador Bridge

and indirect or direct approaching roadways and access points for ten (10) days from the date of this Order.

5. **THIS COURT ORDERS** that any police officer with the Windsor Police Service, the Ontario Provincial Police, and any other police authority (the “Police”), shall have authorization to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order.

6. **THIS COURT ORDERS** that the Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways.

7. **THIS COURT ORDERS** that the Police shall retain discretion:

- a. as to the timing and manner of enforcement of this Order, and specifically retained discretion as to the timing and manner of arrest and removal of any person pursuant to this Order;
- b. to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening, or has contravened, any provision of this Order, upon that person agreeing to abide by this Order; and
- c. and to lay any charges or take any other lawful action.

8. **THIS COURT ORDERS** that any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order shall have authorization to release that person from arrest upon that person agreeing in writing to obey this Order

9. **THIS COURT ORDERS** that the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest, that does not impede or block access to the Ambassador Bridge and approaching roadways. For greater certainty, the terms of this Order and any applicable law must be complied with.

10. **THIS COURT ORDERS** that notice of this Order shall be given by the creation of a URL whereby this Order can be viewed and downloaded, with the Plaintiff, The Corporation of the City of Windsor, and the Attorney General of Ontario issuing press releases containing the URL linking to the Order and the date, time and location of the hearing date contemplated in paragraph 14 of this Order.

11. **THIS COURT ORDERS** that notice of this Order may be given in the following manners:

- a. by posting copies of this Order in or around the City of Windsor;
- b. reading the Order to any person, including but not limited to reading the Order over an amplification system;
- c. publishing this Order online; and
- d. any other manner deemed appropriate by the parties or the Police.

12. **THIS COURT ORDERS** that this Order shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

13. **THIS COURT ORDERS** that costs of this Motion shall be in the cause, subject to the Orders granting the interveners standing.

14. **THIS COURT ORDERS** that the parties and any person having an interest in this matter shall appear before the Court in Windsor by videoconference on February 18, 2022 at 10:00 am for the hearing of a motion to continue this Order.



CHIEF JUSTICE GEOFFREY B. MORAWETZ

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

v.

JIM BOAK et al

***ONTARIO
SUPERIOR COURT OF JUSTICE***

PROCEEDING COMMENCED AT WINDSOR

ORDER

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Barristers & Solicitors
455 Pelissier Street
Windsor, Ontario N9A 6Z9

LAWYERS FOR THE PLAINTIFF

Our File: 80695

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sworn before me by video conference
this 22nd day of February, 2022.



Janani Shanmuganathan



NEWS OPINION ENERGY FEATURES WATCH SHOWS ▾ LETTERS ▾ MEMBE

NEWS

Alberta farmers plan Coutts block Saturday

Organizers say they are expecting “hundreds of trucks and vehicles” to attend and participate in the blockade in both directions “until all mandates and restrictions are lifted.”



Published 4 weeks ago on January 28, 2022
By **Melanie Risdon**





A group of Alberta farmers say they are poised to try and blockade the Coutts border in conjunction with the Freedom Convoy demonstration in Ottawa.



Organizer Nick Friesen, from outside Taber, said he expects truckers from all over Southern Alberta to take part — with drivers from the US also blockading the border on their side.



“I know of one trucking group that’s sending 30 trucks, another company is sending 10. We have truckers coming from La Crête, Peace River, Grande Prairie; farmers are bringing equipment and trailers,” Friesen told the *Western Standard*.

A circulating post on social media is “calling on all semis, trucks, SUVs and cars” to join the organizers in and around the Lethbridge Flying J and the 43 Street area on Saturday at 6 a.m. MST.

“On this day, the Albertans hold the line to take back our given freedoms,” said the post.

“Come join us in helping to get our freedoms back.”



The group is in the blockade stopping border-crossings in both directions “until all mandates and restrictions are lifted.”

“A lot of people wanted to be a part of the Ottawa convoy but couldn’t take that much away from work,” said Friesen.

“This way, they can take part in this blockade and we’re working in conjunction with Ottawa convoy.”

Friesen said he and other organizers will marshal participants down to the Coutts border of Lethbridge Saturday morning and set up the blockade on the Alberta side, while on the US side have hundreds coming to block the south side of the border.

“We are focused on (Alberta Premier) Jason Kenney; either his government backs down or we’re not moving,” said Friesen.

Admitting the blockade will “cause problems for some,” Friesen said the group he represents feels their hand has been forced.

“We believe we have to put our foot down,” said Friesen.

“We’ve gotten to the point where we have to make a stand and put some pressure on government.

“I’ve been a cross-border trucker for 20 years and have been crossing the border for 20 years safely during the pandemic. Now, all of the sudden, they’re locking up the border for unvaccinated truckers.

“There is no evidence truckers were spreading COVID. There is no need for these vaccination passports.”

Friesen said he and others are planning for a two-week stay at the border but will stay as long as necessary. He also said a number of southern Alberta Hutterite colonies will join the protest as well as help support protestors with meals.

Cpl. Deanna Fontaine from Alberta RCMP media relations told the *Western Standard* she is aware of the planned blockade and are “planning measures to ensure public safety.”



“The public does have the right to protest, however, we have to make sure the public is safe.”

Fontaine confirmed RCMP officers will be at the border for the duration of the blockade.

Melanie Risdon is a reporter with the Western Standard

mrison@westernstandardonline.com

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CONVOY UPDATE: Stage set for truck protest in Ottawa



Melanie Risdon

Melanie Risdon is a Calgary-based Reporter for the Western Standard. She has over 20 years experience Global News, Rogers and Corus. mrison@westernstandardonline.com

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20 COMMENTS

NEWS

Canada now officially under martial law

Trudeau was not even in the House when it was voted on, instead casting his ballot virtu



Published 15 hours ago on February 21, 2022

By **Western Standard**



Canadians are now being ruled under martial law after the House of Commons Monday night passed Prime Minister Justin's Trudeau Emergencies Act.

Before the ballot, Trudeau apparently declared it was a confidence vote, meaning his government would have fallen if it failed.

Trudeau was not even in the House when it was voted on, instead casting his ballot virtual

The new Emergencies Act was proclaimed 185-151.

CONTINUE READING

NEWS

WATCH: Ottawa officer tries to smash phone from Alberta woman's hand

"We'll be patrolling all day, if we see you again, it'll be different," says the officer as he laughs and tries to knock the woman's phone from her hand.



Published 21 hours ago on February 21, 2022
By **Western Standard**

WESTERN
Standard

An ugly confrontation between Ottawa police and a woman from Alberta ended with an officer trying to knock her camera phone to the ground.

“Why is the camera in my face right now,” said one police officer who stopped the woman as she walked for a coffee in the “Red Zone,” the site of the Freedom Convoy protests.

“I’m scared I wanna go for a coffee down there,” said the woman who identified herself as being from Alberta.

Dustin DEEM SINGH, Reporter



CONTINUE READING



TRUDEAU: What! You don't trust me

Even though the trucker Freedom's Convoy has decamped Ottawa and there are no border blockades, Trudeau says the Emergencies Act is still needed.



Published 21 hours ago on February 21, 2022

By **Western Standard**

Prime Minister Justin Trudeau says any MP's who don't support his Emergencies Act just don't trust him.

Any MPs who vote against it would mean "they don't trust the government to make incredibly momentous and important decisions."



blockades, Trudeau says the Emergencies Act is still needed.

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to the Affidavit of

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sworn before me by video conference

this 22nd day of February, 2022.

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Janani Shanmuganathan



ALBERTA

MUNICIPAL AFFAIRS

Office of the Minister

MLA, Calgary-Hays

February 5, 2022

Honourable Marco Mendicino
Minister of Public Safety
Government of Canada
Ottawa ON, K1A 0A8

Honourable Bill Blair
Minister of Emergency Preparedness
Government of Canada
Ottawa ON, K1A 0P8

Dear Minister Mendicino and Minister Blair,

As you are aware, Alberta is currently experiencing significant issues with the free movement of vehicles and supplies in southern Alberta with direct impacts to our largest border crossing with the United States. Despite our best efforts to resolve this ongoing issue, the Royal Canadian Mounted Police (RCMP) have exhausted all local and regional options to alleviate the week-long service disruptions at this important international border.

The RCMP, along with local and provincial officials, have been working closely in an attempt to persuade the demonstration participants to remove their vehicles but have been unsuccessful. In addition, as a result of private industry concerns over negative consequences, the RCMP have been unable to secure the appropriate heavy duty equipment required to remove vehicles and other items such as trailers and tractors from the area. Attempts to procure these services with providers from across the Western provinces and the United States have failed.

In order to ensure a return of free movement of people, vehicles and goods and services through this pivotal location, we are seeking federal assistance in removing obstructions from the highway. The RCMP, and other partner law enforcement agencies, will ensure that the locations are secured and will remove demonstrators and bystanders from the area prior to the removal of vehicles and equipment, in order to mitigate risks of potential conflict.

To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.

As this complex and dynamic situation continues to impede the free and safe movement of not only Albertans, but also of critical goods and services vital to both the Canadian and American economy, we are looking to the Government of Canada for assistance. I and my colleague, the Minister of Justice and Solicitor General, or our respective staff members, are available to discuss these requirements, but am hopeful that Alberta's request will be received favourably and responded to promptly.

Sincerely,

Honourable Ric McIver
Minister of Municipal Affairs

cc: Honourable Sonya Savage, Acting Minister of Justice and Solicitor General

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Janani Shanmuganathan

Update #5 – Blockade at Emerson border crossing now cleared

February 16, 2022
Emerson, Manitoba

News release



(/sites/default/files/styles/cropped_large/public/news-nouvelles/2022-02-16/emerson_1.jpg?itok=jkf7Vvna)



(/sites/default/files/styles/cropped_large/public/news-nouvelles/2022-02-16/emerson_3_2.jpg?itok=rZKg9Lml)



(/sites/default/files/styles/cropped_large/public/news-nouvelles/2022-02-16/emerson_3_1.jpg?itok=ZbuESCPP)



(/sites/default/files/styles/cropped_large/public/news-nouvelles/2022-02-16/emerson_4.jpg?itok=bdh3KkT1)

On the morning of February 10, 2022, semi-trailers, farm implements, and passenger vehicles began blocking the Canada/US border at the Emerson port of entry.

RCMP officers from Emerson and Morris detachments and Manitoba RCMP Divisional Liaison Officers immediately attended the scene, and began to work with the demonstrators to find a peaceful resolution.

At noon today, the remaining demonstrators began to move out of the area and full access to the Emerson Port of Entry is now restored.

The Manitoba RCMP coordinated and escorted the vehicles out of this area to ensure a safe and orderly departure. This was to ensure the safety of all involved.

"Throughout the past six days, our officers continued to use open communication, and a measured approach to find a peaceful resolution to this situation. This continuous dialogue between our officers and the demonstrators enabled us to reach a resolution yesterday," said Chief Superintendent Rob Hill, Officer in Charge of Criminal Operations for the Manitoba RCMP.

The number of vehicles taking part in the blockade has fluctuated throughout the past six days. At its peak, the RCMP estimates there were approximately 75 vehicles.

Through dialogue with the demonstrators last week, emergency vehicles, including police vehicles, as well as some agriculture transports and other critical goods were allowed through the blockade.

Apart from these select vehicles, all four lanes of Highway 75 at Provincial Road 243 remained blocked.

For vehicles that weren't able to get through, RCMP officers diverted traffic to alternate border crossings in Manitoba.

"This highway is prone to closures due to weather. With blizzards in the winter and flooding in the spring, our officers are well versed in alternate paths of travel for commercial and passenger vehicles."

Officers will remain in the area today to ensure that the highway and the border to the United States remains open and accessible to all travellers.

"We would like to thank our partners, Canada Border Services Agency and US Customs and Border Protection, as well as our provincial partners at Manitoba Transportation and Infrastructure. These agencies provided assistance to the Manitoba RCMP throughout the duration of the blockade to ensure cross country border traffic was accommodated at other ports of entry."

–30–

Contact information

RCMP Media Relations

204-983-8497

Media.Relations.RCMP.Manitoba@rcmp-grc.gc.ca (<mailto:Media.Relations.RCMP.Manitoba@rcmp-grc.gc.ca>)

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PREMIER
OF MANITOBA

Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa, Ontario K1A 0A6

FEB 11 2022

Re: Canada-US Border Blockade at Emerson

Dear Prime Minister Trudeau:

I write to urge immediate and effective federal action regarding the blockade activity now unfolding at the Canada-US border crossing station at Emerson, Manitoba, part of a series of damaging protest activities now occurring at international border crossings across the country.

You will be aware that the Emerson location is Manitoba's main US border entry point, responsible for facilitating almost all essential north-south commercial trucking operations. This is a critical trade corridor, and orderly and constant traffic flow is an indispensable link in the supply chain relied upon by all Manitobans. Blockades that disrupt this critical corridor – even temporarily – create potential dangers, impose hardships on all Manitobans, and cause severe economic loss and damage to Manitoba and Canadian businesses.

Respectfully, these evolving and increasing border disruptions – in Manitoba and elsewhere across the country – require the reasoned and balanced national leadership that only you and the federal government can provide. To stabilize our international trade routes with our most important ally and trading partner, to de-escalate the domestic tensions that are causing these harmful developments, and to protect the essential interests of all Canadians. A clear and clearly communicated plan is required, while immediate engagement occurs.

I look forward to hearing from you on federal government and Canada Border Service Agency intentions as quickly as the urgency of this situation requires. And I would welcome our discussion on any potential federal-provincial collaborative action that might be of assistance.

Sincerely,

The Honourable Heather Stefanson

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Janani Shanmuganathan

British Columbia

RCMP arrest 4 people for mischief at border protests in Surrey, B.C.

Vehicle access to Pacific Highway border crossing remains blocked Monday

CBC News · Posted: Feb 13, 2022 12:53 PM PT | Last Updated: February 14



Protesters against vaccine mandates in Canada block roads near the Pacific Highway border crossing in Surrey, B.C., on Sunday. (Andrew Lee/CBC)

RCMP arrested four people for mischief on Sunday at pandemic protests close to the Pacific Highway border crossing in Surrey, B.C.

The Canada Border Services Agency (CBSA) told travellers to avoid the Pacific Highway border crossing, which usually handles a large amount of commercial traffic, as vaccine mandate protesters continued to block highways.

It comes after [protests against public health measures](#) brought hundreds of demonstrators to the border crossing on Saturday, with officers saying some broke barricades during the rally.

As of 9 a.m. PT on Monday, the road leading to the crossing remains closed and police are still on site, RCMP said — though the crossing itself remains open, according to the CBSA.



Police are seen maintaining a line as protesters block the highway in Surrey on Sunday. RCMP said the road leading to the Pacific Highway border crossing remains closed. (Andrew Lee/CBC)

On Saturday, the force said protests in Surrey had been mainly peaceful, but some people breached police barricades and drove in the opposite direction along 176 Street.

Police did not immediately provide details on Sunday about who was arrested for mischief and if those arrested were still in custody or had been released.

- [**Vaccine mandate protesters force highway closure at Canada-U.S. border in Surrey as rallies enter 3rd weekend**](#)
- [**Surrey child-care centre says it's been disrupted by border protest**](#)

In a statement on Sunday, the CBSA said it was experiencing significant delays due to the protests and advised commercial traffic to use the Aldergrove and Abbotsford-Huntington border crossings instead.

Surrey RCMP reported significant traffic delays near the border over the weekend.

Protesters calling for the end of vaccine mandates and other COVID-19 restrictions gathered near the Pacific Highway crossing in Surrey B.C. for a second day in a row on Sunday. (Andrew Lee/CBC News)

A CBSA spokesperson encouraged commuters and travellers to check [the CBSA website](#) for current wait times and conditions.

"The CBSA recognizes border disruptions affect both travellers and industry and is working collaboratively with law enforcement partners to restore normal border operations at affected ports of entry as quickly as possible," the spokesperson said.

Rallies against public health measures have entered [their third week](#) across the country with some observers reporting [threatening behaviour](#) from demonstrators. Numerous noise complaints have been filed over loud honking.

Corrections

- A previous version of this story stated in error that five people were arrested on Sunday in relation to the pandemic protests near the Pacific Highway border crossing. In fact, RCMP arrested four people.
Feb 13, 2022 7:31 PM PT

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Janani Shanmuganathan



Royal Canadian Mounted Police (<https://www.rcmp-grc.gc.ca>)

[Home](#) → [B.C.](#) → [Surrey](#) → [Newsroom](#)

Update: Protesters depart and roads re-open near the Pacific Highway Border Crossing

Surrey

2022-02-19 20:45 PST

Surrey RCMP is updating the public on the current situation at the Pacific Highway Border Crossing.

As of 8 pm on February 19, 2022, the vast majority of protesters and vehicles have now departed the area. A small group of protesters remain at the corner of 176 Street and 8th Avenue, on the sidewalk.

Traffic is now moving on 176 Street in all directions and the public can access the border crossing. Vehicle road checks will remain in place.

Police will be maintaining a large presence throughout the evening, with a continual assessment of the situation.

Investigations remain underway into unlawful activity earlier in the day. This includes reports of intimidation and alleged assault against members of the media ([see previous news release \(https://surrey.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2126&languageId=1&contentId=73553\)](https://surrey.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2126&languageId=1&contentId=73553)).

“It’s been a very busy day for our teams on the ground, and those supporting operations from behind the scenes,” says Sgt Elenore Sturko. “Our work here is not done though, and the public can expect a continued police presence in the days and nights ahead.”

For media inquiries contact:

Sgt. Elenore Sturko

Media Relations Officer

Surrey RCMP Media Relations Unit

Email: surrey_media_relations@rcmp-grc.gc.ca

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Janani Shanmuganathan

Toronto

Ontario declares state of emergency in response to convoy protests

Province's government facing growing calls to bring an end to blockades

[Adam Carter](#) · CBC News · Posted: Feb 11, 2022 8:28 AM ET | Last Updated: February 12



Ontario declares state of emergency, many protesters remains defiant

11 days ago | 3:21

Ontario Premier Doug Ford has declared a state of emergency as anti-vaccine mandate demonstrations continue to cause disruptions, but at the Ambassador Bridge in Windsor, Ont. many protesters are still refusing to leave. 3:21

[comments](#)

Ontario declared a state of emergency on Friday in response to convoy protests against public health measures meant to curb the spread of COVID-19, which have caused major disruptions in multiple areas of the province in recent weeks.

Premier Doug Ford made the announcement Friday morning while protest blockades continue to shut down parts of Ottawa's city core and portions of Windsor's Ambassador Bridge.

Ford signed the state of emergency order late Friday. It now has to be ratified by cabinet within 72 hours and will be in effect for 14 days.

- [Trudeau warns of 'severe consequences' for anti-vaccine mandate protesters who don't stand down](#)
- [Opportunity to end convoy protest peacefully is slipping away, experts say](#)

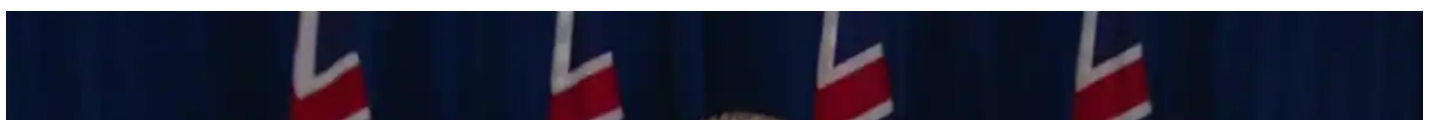
Meanwhile, more protests are expected at Queen's Park in downtown Toronto, forcing police to close off several roads in the surrounding area.

At a news conference Friday, Ford said he will convene cabinet and "urgently enact orders that will make crystal clear it is illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.

"This will include protecting international border crossings, 400-series highways, airports, ports, bridges and railways. It will also include protecting the safe and essential movement of ambulatory and medical services, public transit, municipal and provincial roadways, as well as pedestrian walkways," Ford said.

"Fines for non-compliance will be severe, with a maximum penalty of \$100,000 and up to a year imprisonment. We will also provide additional authority to consider taking away the personal and commercial licences of anyone who doesn't comply with these orders."

WATCH / Ontario premier gives warning to protesters:





Ford warns protesters of 'severe' consequences

11 days ago | 2:07

Ontario Premier Doug Ford urged protesters against vaccine mandates to go home or face 'severe' consequences after declaring a state of emergency in the province. 2:07

Ford criticized

Ford has faced criticism for not doing more to stop the so-called convoy protest in Ottawa, which is now set to enter its third weekend. The premier referred to the situation in Ottawa as a "siege" on Friday.

"It's an illegal occupation. This is no longer a protest," Ford said.

He has told the protesters, who are opposed to COVID-19 vaccine mandates and public health measures brought in by governments to curb the spread of the virus, to end their blockades and go home. However, his government also [declined a third invitation](#) to participate in trilateral talks to deal with ongoing protests, sources told CBC News on Thursday.





A young child wrapped in a Canadian flag plays soccer in front of police officers during the ongoing protest in Ottawa Feb. 9, 2022. Ford urged parents to remove their kids from any protests Friday, saying they are 'not a place for children.' (Lars Hagberg/Reuters)

Ford defended that decision Friday, saying that people "don't want another table of a bunch of politicians sitting there talking.

"People want to see action. And that's what we're taking," he said.

Provincial Opposition NDP Leader Andrea Horwath, however, slammed the province's inaction at a news conference Friday for what she called a "horrible insurrection" in Ontario.

"They basically waited until our economy was being damaged before they did anything," Horwath said.

- [Ottawa braces for 3rd straight weekend of protests](#)
- **VIDEO** [Ontario court hearing for injunction to end blockade at Windsor's Ambassador Bridge now underway](#)

So far, Ontario [hasn't significantly altered its plan](#) to ease public health measures — though Ford said Friday that the province is "on track to very soon remove almost all restrictions for businesses as a part of our reopening plan," and is working on a plan to "remove the vaccine passport system.

"This is great news and a sign of just how far we have come together in this fight," Ford said.

Pandemic indicators have been improving in Ontario in recent days. The province [reported 1,829 hospitalizations of people with COVID-19 Friday](#), marking the second straight day that number has dipped below 2,000 since early January.

Protesters blocking traffic to Windsor, Ont.'s Ambassador Bridge agreed to clear one lane Friday, allowing some flow of traffic exiting the bridge into Canada. (Evan Mitsui/CBC)

The premier also said Friday that he doesn't believe these protests are representative of the bulk of truckers in the province, which was the initial stated thrust of the protests.

"This is about a political statement. That's what this is about," Ford said.

"To the occupiers: please, go home."

- [Toronto police close Queen's Park Circle in response to possible convoy protest](#)

Police deployed to Ambassador Bridge

Ford also took questions regarding [a recent CTV News story](#), which showed the premier was snowmobiling Saturday in the Muskoka region, which is roughly 170 kilometres north of Toronto. At the same time, protests were still snarling the streets of Ottawa and Toronto.

"I was at the cottage. I went out on my snowmobile," Ford said. "I take calls to one o'clock in the morning. I get calls before six o'clock in the morning, and I will not stop until we get this taken care of. And I will continue to make sure we're engaged in every single area of our responsibility."

Horwath was critical of Ford's snowmobiling trip.

"I can only imagine the anger and the sense of betrayal that the people of Ottawa and folks in Windsor and all Ontarians and Canadians, frankly, are feeling with this premier," she said.

Meanwhile, policing resources are being deployed in Windsor to the area of the Ambassador Bridge, where protests against COVID-19 public health restrictions have been snarling cross-border traffic since Monday.

The protest has disrupted traffic along the crucial trucking route that connects Windsor and Detroit, prompting escalating concern over the impact on the auto industry, [which has idled some plants](#), and [Canada-U.S. trade overall](#).

The White House said in a statement Friday that U.S. officials have had "productive conversations with our Canadian counterparts over the last 24 hours to bring the blockade at the Ambassador Bridge and other ports of entry to a swift and peaceful end.

"We feel confident that that at the municipal, provincial and federal level, Canada appreciates the urgency required to take action," the statement reads.

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[MENU](#) ▼[Toronto](#)

Ontario court freezes access to funds raised for protest convoy on GiveSendGo platform

Order applies to 'Freedom Convoy 2022' and 'Adopt-a-Trucker' campaign pages

CBC News

Posted: February 10, 2022

Last Updated: February 10, 2022



A statement from Premier Doug Ford's office on Thursday said Attorney General Doug Downey brought the application for the order to prohibit anyone from distributing donations made through the website's 'Freedom Convoy 2022' and 'Adopt-a-Trucker' campaign pages. (Michael Charles Cole/CBC)

The Ontario Superior Court of Justice has granted a request from the provincial government to freeze access to millions of dollars donated through online fundraising

platform GiveSendGo to the truckers' convoy protesting COVID-19 restrictions in Ottawa and at several border crossings.

A statement from Premier Doug Ford's office on Thursday said Attorney General Doug Downey brought the application for the order, under Section 490.8 of the Criminal Code, to prohibit anyone from distributing donations made through the website's "Freedom Convoy 2022" and "Adopt-a-Trucker" campaign pages.

Ivana Yelich, a spokesperson for the premier, said the order "binds any and all parties with possession or control over these donations."

ADVERTISEMENT

Convoy organizers quickly set up a campaign on Christian fundraising site GiveSendGo, after donors initially raised more than \$10 million through the crowdfunding platform GoFundMe.

Late last week, GoFundMe said it would stop payments to convoy organizers and refund donors directly because the protest violates its rules on violence and harassment.

- [**Convoy protest could change the way money is monitored, says watchdog agency**](#)

The company announced its decision in a [blog post](#) on Friday evening, just two days after it froze disbursements of the fund.

Hundreds of the GoFundMe donations to the Ottawa convoy protest came from donors who said they were located outside of Canada, [according to an analysis of data collected by CBC News](#).

The analysis of a sample of more than 6,600 comments made on the GoFundMe crowdfunding page before it was shut down shows that 573 donations, amounting to more than \$33,378, came from people who said they were located abroad.

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- [**Convoy protest received hundreds of donations that appeared to be from abroad**](#)
- [**GoFundMe ends payments to convoy protest, citing reports of violence and harassment**](#)

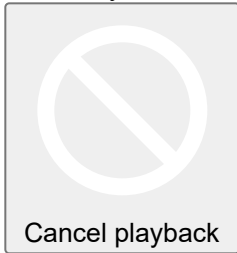
The GiveSendGo campaign has raised \$8.2 million US so far.

Also on Thursday, representatives of the Ontario government declined a third invitation to participate in trilateral talks to deal with ongoing vaccine mandate protests, sources told CBC News.

A meeting of representatives of all three levels of government was scheduled for the afternoon.

WATCH | Why GoFundMe cut off protest-convoy fundraising campaign:

Ad : Playback will start after this advertisement



GoFundMe will not disburse any more money from a fundraising campaign for the protest convoy, saying the money will be refunded. Meanwhile, Ottawa police are changing tactics ahead of what's expected to be another weekend of noisy protests. 2:40

With files from the CBC's Katie Simpson and The Canadian Press

[CBC's Journalistic Standards and Practices](#)

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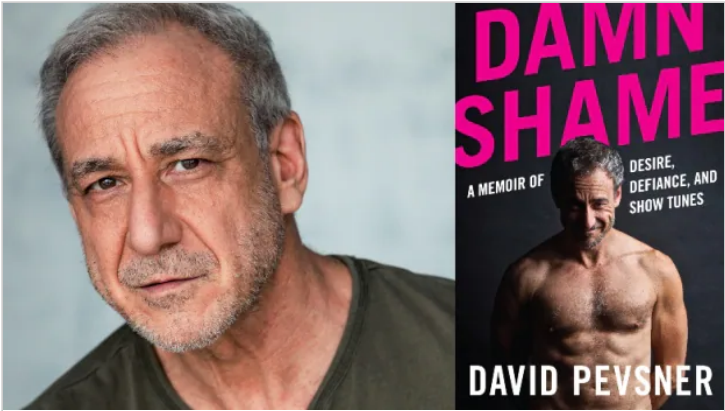


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EXHIBIT X

Link to Standing Committee on Public Safety and National Security dated February 10, 2022:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2?fk=11479035>

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Janani Shanmuganathan

Emergency Legislation and Rights in Canada: The War Measures Act and Civil Liberties

*Patricia Peppin**

From the moment of its enactment in 1914 until its final invocation in 1970, the War Measures Act was a tool through which the civil liberties of Canadians were swiftly abrogated. Under the Act, successive Canadian governments were able to trench on a broad range of rights through a variety of policies, ranging from censorship and restrictions on association to the infamous war-time internments of Canadians of Ukrainian and Japanese descent. In this article Professor Peppin recounts the history of the Act's application, a history of abuse which, she maintains, was played out over several generations, unfettered by opposition parties, the press, or the judiciary.

Introduction

All liberal democratic states face the dilemma of reconciling protection of civil liberties with protection of the state itself from internal or external threats to its security. Liberal democratic principles require stringent limitations on the authority of government to trench upon rights. Yet there is widespread recognition that circumstances may exist under which the social order is so gravely endangered that actions overriding rights are justifiable. These conflicting needs have confronted liberal democratic states with a fundamental tension in constitutional law.

Canadian law in this area has been the subject of recurring and

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intense controversy. In 1914, Parliament enacted the *War Measures Act*¹ to give the government the authority to assume unrestricted emergency powers in times of war and "apprehended insurrection."

For more than a quarter of the years² since the *War Measures Act* was passed in 1914 until it was repealed in 1988³, the people of Canada were governed under emergency legislation. This has taken place both under the *War Measures Act* itself, and under successor legislation:

1914-1919	<i>War Measures Act, 1914</i> , S.C. 1915, c. 2, assented to August 22, 1914.
1939-1945	<i>War Measures Act</i> , R.S.C. 1927, c. 206
1945-1947	<i>National Emergency Transitional Powers Act, 1945</i> , S.C. 1945, c. 25
1947-1951	<i>Continuation of Transitional Measures Act, 1947</i> , S.C. 1947, c. 16; S.C. 1947-48, c. 5; S.C. 1949, c. 3; S.C. 1950, c. 6
1951-May 1954	<i>Emergency Powers Act</i> , S.C. 1951, c.5; S.C. 1952-53, c. 33
Oct. 1970-Dec. 1970	<i>War Measures Act</i> , R.S.C. 1970, c. W.-2
Dec. 1970-Apr. 1972	<i>Public Order (Temporary Measures) Act 1970</i> , S.C. 1970-72, c. 2
1988	<i>War Measures Act</i> repealed by the

1 The *War Measures Act*, 1914, S.C. 1915, c. 2.

2 When Herbert Marx wrote his trenchant analysis of the *War Measures Act* in 1970, he noted that "[s]ince the outbreak of the First World War, Canada has been subject to 'emergency' legislation for about forty percent of the time." "The Emergency Power and Civil Liberties" (1970) 16 McGill L.J. 39 at 40.

3 *Emergencies Act*, S.C. 1988, c. 29, s. 80, assented to July 21, 1988; consolidated in R.S.C. 1985, c. 22 (4th Supp.).

Emergencies Act, S.C. 1988, c. 29, s. 80,
assented to July 21, 1988.

As Donald Creighton wrote in 1944:

By virtue of the *War Measures Act*, which was passed during the special session of August, 1914, the federal government began slowly but inexorably to do a number of things which it would never have dreamed of doing in time of peace. The curious dual constitution was already in the process of formation. And, in the end, Canada was to be the slightly mystified and highly embarrassed possessor of two federal systems: one for times of peace and one for periods of war.⁴

The terms upon which the *War Measures Act* could be invoked were broadly cast, and the Act has been used in both war and peace-time to authorize actions widely criticized as unwarranted infringements of civil liberties. The *War Measures Act* superseded all existing laws, provided overarching powers for cabinet to govern through regulation, and permitted overriding the normal operation of the federal system. It has been used to interfere with the fundamental rights of individual citizens and groups.

The *War Measures Act* was used to impose censorship, to outlaw socially unacceptable organizations, to legalize retroactively the actions taken by the military during the Quebec City conscription riots, to impose preventive detention, to allow the deportation of Canadian-born people of Japanese ancestry, to permit the internment of thousands of Japanese Canadians, to authorize the confiscation of Japanese Canadians' property under the guise of expropriation for compensation, the registration and internment of alien enemies in both World Wars, and the detention of persons who belonged to "unlawful associations" like the Communist Party. Citizenship, the right to hold property, freedom to contract, the right to bring a civil suit, freedom of speech, freedom of the press, freedom of association, *habeas corpus*, equality before the law, due process, the right to a fair trial, the presumption of innocence, and the rule of law itself have all been denied in greater and lesser measure under the *War Measures Act*.

Not only were the powers employed to this extent: their potential impact was even more extensive. The powers possessed by the executive under the *Act* extended considerably beyond the scope

⁴ D.G. Creighton, *Dominion of the North* (Boston: Houghton Mifflin, 1944) at 439.

evidenced by their use. The *Act* contained within itself the potential for despotism, unchecked by any legitimate or effective means of control.

Since the last use of the *War Measures Act* during the "October Crisis,"⁵ the *Canadian Charter of Rights and Freedoms*⁶ has come into being. Many of the actions of the past would be found to be infringements of the guarantees of rights and freedoms in the *Charter*. Under section 1, the *Charter* guarantees are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."⁷ It is an open question whether the guarantees in the *Charter* would have prevented many, or even any, of what are now widely believed to have been excesses in the past. With this in mind, Parliament has enacted legislation to replace the *War Measures Act*.

Adjudicating the meaning of equality and discrimination under section 15 of the *Canadian Charter of Rights and Freedoms*⁸ in *Andrews v. Law Society of British Columbia*, Mr. Justice McIntyre, writing the majority opinion on section 15, said:

Discrimination is unacceptable in a democratic society because it epitomizes the worst effects of the denial of equality, and discrimination reinforced by law is particularly repugnant. The worst oppression will result from discriminatory measures having the force of law.⁹

This paper explores the kind and extent of limitations of freedom and equality by force of law under the *War Measures Act*. It asks what rights infringements were permissible under the emergency legislation in Canada since the *War Measures Act* was enacted: what was done, what was ruled permissible by the courts, and what limitations, if any, were placed on the despotic use of power by the executive.

5 The "October Crisis" was precipitated by the kidnappings of James Cross, a British diplomat, and Pierre Laporte, a cabinet Minister in the Bourassa Government, by members of the F.L.Q. in October of 1970. The *War Measures Act* was invoked in the early hours of October 24th.

6 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

7 *Ibid.*

8 *Ibid.*

9 *Andrews v. Law Society of British Columbia* (1989), 56 D.L.R. (4th) 1 (S.C.C.) at 16.

I. World War I

The key provisions of the *Act* provided for the proclamation of the emergency (section 4), the granting of special powers to the Governor in Council (section 6), and the coming into force of those powers only during the emergency (section 3). As well the statute provided for the fixing of compensation (section 7), forfeitures of vessels (section 8), imposition of penalties (section 10), non-release of confined alien enemies without consent (section 11), treatment of residents leaving Canada to assist the enemy (section 12), augmenting the R.C.M.P. (section 13), and retroactive ratification of acts or omissions during the period after August 1, 1914.

Section 4 provided that a proclamation under the authority of the King or the Governor in Council would be "conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated", and of its continued existence until a subsequent declaration that it no longer existed. The *Act* provided in section 5 that war had existed since August 5, 1914. Section 6 provided very broad powers to cabinet, authorizing acts and orders deemed by the Governor in Council, "by reason of the existence of real or apprehended war, invasion or insurrection ... necessary or advisable for the security, defence, peace, order and welfare of Canada." The section provided as well that orders and regulations made under section 6 should have the force of law.

Under the powers granted to it under the *War Measures Act*, cabinet passed orders in council which defined Canadian participation in the war and gradually reshaped the nature of civil rights in this country. The key measures affecting rights were the censorship regulations, the outlawing of certain associations, the registration and internment of alien enemies, the amendments to the *Military Service Act, 1917*, and the restrictions on labour disputes.

It is clear from the debates that the bill was given swift and supportive passage in the House. The bill was drafted in about ten days, was speeded through Parliament on August 21, was given Royal assent the following day, and aroused little media attention.¹⁰ F.

10 F.M. Greenwood, "The Drafting and Passage of the *War Measures Act* in 1914 and 1927: Object Lessons in the Need for Vigilance," in W. Pue and B. Wright, eds. *Canadian Perspectives on Law & Society: Issues in Legal History*, (Ottawa: Carleton

Murray Greenwood has described it this way:

From our vantage point there is a touch of innocence about the preparation and passage of the *War Measures Act, 1914*. The Minister of Justice, Charles Doherty, thought at first that Parliament would never agree to such an open-ended devolution of legislative power to the executive ... It is virtually certain from later events that many lawyers failed to understand that the Governor-in-Council was being given power to amend well-established principles of law ... If the naiveté of a simpler, less regulated era peeps through, so too, however, does the Canadian tendency to indulge in drastic security legislation in times of crisis, real or apprehended, without much concern for civil liberties and with almost no critical examination of the invariably elastic language used.¹¹

A. *Censorship*

The first censorship regulation was promulgated on November 6, 1914.¹² The Postmaster General was authorized to issue a warrant directing that the privilege of using the mails or circulating materials in any way be refused for any material which, in his opinion, had contained, or was in the habit of containing, false information about the war or its causes, and which tended to influence people against the war effort. After the Minister gave notice of such a refusal, circulation and even possession of the material were forbidden.

Only a few weeks after commencement of the war, on September 24, 1914, a regulation¹³ imposed restrictions on telegraph and telephone messages going out of the country, by requiring employees to swear that they would not transmit material unless they were "satisfied on good and reasonable grounds" that no military information useful to the enemy was being sent. It also authorized the Minister of Justice to take

University Press, 1988) 291 at 293-295. His principal argument is that the *Act* was not intended, at passage, to apply in peacetime. Martin Friedland has written that the language "war, invasion or insurrection, real or apprehended" and the separate declaration that war existed, make it "likely" that the government intended the statute to apply after the war. M.L. Friedland *National Security: The Legal Dimensions* A Study Prepared for the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, (Hull: Minister of Supply and Services Canada, 1980) at 110.

11 Greenwood, *Ibid.* at 292.

12 Order in Council of November 6, 1914, S.C. 1915, pp. clxxxi-clxxxii.

13 Order in Council of September 24, 1914, S.C. 1916, pp. cviii-cviii.

possession of the property, offices, and works of a company and required the submission of all messages to one person who assumed control and would direct the transmission. An order of September 12, 1914,¹⁴ was put into place to prevent the giving out of information useful to the enemy and to prevent espionage. This order imposed obvious and necessary limitations on rights, such as prohibitions on publishing or communicating information about troop movements and defence measures, photographing or otherwise representing harbours, docks or naval works, tampering with communications equipment, damaging roadways or culverts, being out after a curfew imposed around a defended harbour, and other prohibitions. The order stated that:

No person in, or in the neighbourhood of, a defended harbour shall by word of mouth or in writing spread reports likely to cause disaffection or alarm among any of His Majesty's forces or among the civilian population.¹⁵

The principal censorship measure was brought into force on June 10, 1915.¹⁶ Under it, the Secretary of State was authorized to appoint a censor of "writings, copy or matter printed or publications issued" at any printing establishment or publishing house. After his appointment, nothing was to be printed without the censor's approval. Prohibited material consisted of news about the operation of the war or the movement of forces, or criticism or even comments on the actions or policy of the governments of any state but the enemy, "if such printing ... [is] likely to cause disaffection to His Majesty," interfere with military success, prejudice relations with any foreign state, "assist or encourage the enemy" or hinder the successful prosecution of the war.¹⁷ A reverse onus was established: it was presumed, in the absence of evidence to the contrary, that the printing or circulation of statements was likely to cause disaffection. The regulation created a right of entry along with a right to remain for a reasonable amount of time to inspect the premises. It allowed the seizure and destruction of

14 Order in Council of September 12, 1914, S.C. 1915, pp. clxviii-clxx.

15 *Ibid.* para. 8.

16 Order in Council of June 10, 1915, S.C. 1916, pp. cx (misprinted as xc)-cxi.

17 *Ibid.*

the printed material and, if the Secretary of State directed it, allowed the seizure of the printing presses, plant and machinery, and closure of the premises.

Before 1917, there were few prosecutions under censorship orders, but as the conscription crisis loomed, self-imposed press censorship deteriorated and prosecutions increased.¹⁸ In early 1917, in the consolidation of the censorship orders, the definition of "objectionable matter" was expanded to include false reports or statements concerning the causes or operations of the war and "any report or statement intended or likely to prejudice the recruiting, training, discipline, or administration of any of His Majesty's forces or the operation or administration of any Act or order in council concerning National Service."¹⁹ In other words, the offence of impeding conscription by word or in writing was created. The regulation also expanded the categories of material to include anything staged or exhibited in addition to anything written. This offence not only included the act of writing the material but also reached having the item in one's possession. This order not only created a Chief Mail Censor for Canada, but also prescribed the maximum penalties under the *War Measures Act*, and authorized the destruction of books by the Secretary of State.

On May 22, 1918, a new version of the *Consolidated Orders Respecting Censorship*²⁰ was made. The definition of "objectionable matter" was extended to 15 categories, including material which "may tend to weaken or in any way detract from the united effort of the people of Canada in the prosecution of the war." This section was so broadly worded that it gave rise to prosecutions like that in *R. v. Watson*,²¹ where a workman was convicted for making critical statements to a few of his co-workers in a conversation which could have been heard by only four or five people. His comments were, "to the effect that the British Parliament was bleeding Canada dry; that

18 D.E. Smith, "Emergency Government in Canada" (1969) 50 C.H.R. 429 at 439.

19 *The Consolidated Orders Respecting Censorship*, January 17, 1917, S.C. 1917, pp. xcii-xcvii.

20 P.C. 1241, May 22, 1918, S.C. 1919, pp. lxxvii (mislabelled lxxvi)-lxxi, revoking Orders in Council of January 17, 1917 (P.C. 146), and April 16, 1918 (P.C. 915).

21 (1919), 15 O.W.N. 417 (H.C.).

King George was just as bad as the Kaiser and did not go any nearer to the battle-front; that people here were foolish to enlist."²² It was held that such speech was public expression. The prosecution of such offences was weighted in the state's favour by two other factors: the reverse onus was retained;²³ and, in order to prohibit possession of materials, the regulation merely required that the Secretary of State "be satisfied" that objectionable material was contained.²⁴

The *Order Respecting Enemy Publications* was brought into force on September 25, 1918,²⁵ the same day as the *Unlawful Associations Regulations*²⁶ came into being. The Enemy Publications Order prohibited any publication in any enemy language, which included, as well as German and Austrian, Russian, Ukrainian, Finnish, Estonian, Syrian, Croatian, Ruthenian, Livonian, Bulgarian, Turkish, Roumanian, and Hungarian. If the Secretary of State, Superior Court Judge or police magistrate had "reason to suspect" the use of premises in contravention of the order, he could issue a warrant authorizing entry at any time of the day or night. In any prosecution or proceedings by or under the authority of an Attorney General, all allegations in the information, charge or indictment were, without proof, to be rebuttably presumed true. After press objections, this order was modified on April 2, 1919, and its application limited to publications in German, Bulgarian, Turkish, or Hungarian.²⁷

Only the earliest censorship regulations were unobjectionable uses of the emergency power. As the war proceeded, cabinet made increasingly excessive use of the power to censor speech.

22 *Ibid.* at 418.

23 *Supra* note 20, Order II, section 2.

24 *Ibid.* section 5.

25 P. C. 2381, September 25, 1918, S.C. 1919, pp. lxxi-lxxii.

26 P.C. 2384, September 25, 1918, S.C. 1919, pp. lxxvii-lxxx.

27 P.C. 703, April 2, 1919, S.C. 1919, pp. lxxiii-lxxiv.

B. *Unlawful Associations*²⁸

One of the most insidious abuses of state power was the creation of an offence of participation in unlawful associations. As a response to the Russian Revolution and the perceived strength of pro-Communist sentiments, particularly among some sectors of the labour movement, the government outlawed certain associations, provided for the outlawing of more, and created status offences of membership in, or being officers of, "unlawful associations."

The 1918 order deemed as unlawful associations:

- (a) The Industrial Workers of the World;
Russian Social Democratic Party;
The Russian Revolutionary Group;
The Russian Social Revolutionists;
The Russian Workers Union;
The Ukrainian Revolutionary Group;
The Ukrainian Social Democratic Party;
The Social Democratic Party;
The Social Labour Party;
Group of Social Democrats of Bolsheviks;
Group of Social Democrats of Anarchists;
The Workers International Industrial Union;
Chinese Nationalist League; and
Chinese Labour Association.
- (b) Any association, organization, society or corporation, one of whose purposes or professed purposes is to bring about any governmental, political, social, industrial, or economic change within Canada by the use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, or physical injury to person or property or threats of such injury in order to accomplish such change or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend while Canada is engaged in war;
- (c) Any organization declared unlawful by the Governor in Council.

Attending meetings, speaking publicly in advocacy of an unlawful association, or distributing its literature gave rise to a presumption of

²⁸ *Supra* note 26.

the accused's membership, in the absence of proof to the contrary. Also included were provisions for confiscation of real or personal property, entry without warrant at any hour of the day or night, and prohibition of non-religious meetings conducted in the language of a country with which Canada was at war or in any of the languages of Russia, the Ukraine, or Finland. On April 2, 1919, the order was repealed since:

It appears that these regulations were designed to emphasize, during the period of war, the criminal character of the several matters ... rather than to supply sanctions for which the existing law made no provisions; ... now ... persons who might be offenders against the regulations, were they permitted to endure, may be adequately dealt with under the existing law.²⁹

This unlawful associations order formed the basis for the notorious Section 98³⁰ of the *Criminal Code*, presented to Parliament immediately after the Winnipeg General Strike, and against which civil libertarians -- most notably, J.S. Woodsworth -- fought, until its repeal in 1936.³¹ As F.R. Scott has pointed out in several articles, section 98 had an extraordinarily severe maximum penalty of twenty years.³² Even when it was repealed, the section did not completely disappear, since section 133 of the *Criminal Code*, defining seditious intent, was amended to include anyone who published or circulated any printed or written material "in which it is advocated, or who teaches or advocates, the use, without the authority of law, of force, as a means of accomplishing any governmental change within Canada."³³ Section 98

29 P.C. 702, April 2, 1919, S.C. 1919, p. lxxx. This statement is particularly interesting in light of the amendment to add s. 97A to the Criminal Code in the same year (assented to July 7, 1919). A similar case can be made against the imposition of the *War Measures Act* in 1970.

30 *An Act to amend the Criminal Code*, S.C. 1919, c. 46, s. 97A (later section 98). See John Blair Mackenzie "Section 98, Criminal Code and Freedom of Expression in Canada" (1972) 1 Queen's L.J. 469.

31 *An Act to amend the Criminal Code*, S.C. 1936, c. 29, s. 1.

32 F.R. Scott, "The Trial of the Toronto Communists" and "Freedom of Speech in Canada" in F.R. Scott, ed., *Essays on the Constitution: Aspects of Canadian Law and Politics* (Toronto: University of Toronto Press, 1977) 49 at 50 and 60 at 66-67 respectively.

33 *Ibid.* s. 4; now R.S.C. 1985, c. C-46, s. 59(4).

was used against Tim Buck and seven other Communist defendants in 1931,³⁴ against Communist supporter Weir in 1929,³⁵ and against the avowed non-Communist Evans who had spoken at labour rallies, in 1934.³⁶ The sedition offence was also used to curb the activities of the Jehovah's Witnesses, until the *Boucher*³⁷ case was decided by the Supreme Court of Canada and the interpretation was narrowed.

The unlawful associations order provided the basis for the *Public Order Regulations*, 1970; it was on the basis of this illiberal graft onto Canadian criminal law that hundreds were imprisoned and some were tried.

C. *Alien Enemies*

Immediately after the declaration of War, and before the *War Measures Act* was passed, proclamations³⁸ of the Governor General in Council stated that as long as people of German or Austro-Hungarian nationality pursued their ordinary occupations, there would be no

34 *R. v. Buck et al.* (1932), 57 C.C.C. 290 (Ont. C.A.). All but one of the men charged were convicted and sentenced to five years in prison. One man received a two-year sentence. (Scott, *supra* note 32 at 58-59). Lita-Rose Betcherman described how public opinion shifted against the harsh treatment and the prisoners became "an albatross around Bennett's neck." All the prisoners were released before their sentences ended. Lita-Rose Betcherman *The Little Band: The Clashes Between the Communists and the Political and Legal Establishment in Canada, 1928-1932* (Ottawa: Deneau Publishers, 1982) at 215.

35 In *R. v. Weir* (1929), 52 C.C.C. 111 at 118 (Ont. Co. Ct.), the accused was acquitted of the charge under s. 98 after Denton, Co. Ct. J., determined that a circular calling for a "mighty fighting demonstration against police terrorism," "mass demonstration and protest," "a revolutionary struggle against capitalism" *etc.*, did not advocate the use of physical force, violence or terrorism, as the offence required.

36 In *R. v. Evans* (1934), 62 C.C.C. 29 at 30, 36 (B.C.C.A.), the Court declined to interfere with the trial judge's charge to the jury and upheld the conviction for advocating, teaching or defending the use of force. Evans had said among other things that, with things the way they were and with the people only separated by glass from the things that they needed, it was remarkable that they didn't take them from the stores.

37 *Boucher v. R.*, [1951] S.C.R. 265. See especially the judgment of Rand J. See also the other decisions of the Supreme Court protecting civil liberties in *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 and *Roncarelli v. Duplessis*, [1959] S.C.R. 121.

38 Proclamations of August 7, 13 and 15, 1914, S.C. 1914, pp. lix-lx, lx-lxi, lxv-lxvii.

interference with them, unless there were reasonable grounds to believe that they were engaged in hostile and/or illegal acts. Enemy reservists were also prohibited from leaving the country. In addition, the government issued a public notice to the effect that fears for their safety and fears that the government might deprive them of their freedom to hold property or to carry on business were "quite unfounded."³⁹

The proclamations illustrated the public stance of the government at the outset of the War: on the one hand, a paternalistic desire not to interfere if the alien enemies could maintain jobs, and, on the other hand, a commitment to the protection of the state from acts supportive of the enemy. By October 28, 1914,⁴⁰ the government had adopted the policy of registration of all alien enemies; failure to register or answer questions made the individual subject to internment. The registrar in each centre⁴¹ determined whether it was consistent with the public safety for the person to remain at large; then, if the person had the desire and means to remain in Canada, he or she might remain at liberty, subject only to reporting monthly. If the person didn't have the "means to remain in Canada conformably to the laws and customs of the country,"⁴² subject to the monthly reporting obligation, then the person was to be interned. In other words, if the person was no threat but was poor, or was unable to keep a job because of employers' unwillingness to hire "alien enemies", then internment was required. Wives or children dependent on the interned individual were "permitted to accompany him,"⁴³ and were interned on the basis of their family relationship: 81 women and 156 children were interned in camps in this way.⁴⁴ Aliens could not leave Canada without permission of the

39 Public Notice, September 2, 1914, S.C. 1915, p. lxix.

40 Order in Council of October 28, 1914, S.C. 1915, pp. clxxvi-clxxviii.

41 The order in council of October 31, 1914, outlined the cities where registration was to take place.

42 *Supra* note 40, para. 7.

43 *Ibid.* para. 9.

44 J.R. Carruthers, "The Great War and Canada's Enemy Alien Policy" (1978) 4 Queen's L.J. 43 at 44. A monthly rent, food, and fuel allowance was given to 40 other women and 81 children who chose not to be interned (at 44). See his thorough analysis of the social policy considerations and camp conditions, as well as the international and comparative law cases.

registrar, who needed to be satisfied that the person would not be able to materially assist the enemy forces.⁴⁵ In 1914, 8,200 people were interned under this order.⁴⁶ James Carruthers has stated that of 8,579 interned men of enemy alien origin, only 3,179 had a connection with the war effort, as captured combatants, participants or reservists, while the greater number were civilians. He found that the names of almost 80,000 enemy aliens were recorded in the police records, but most of these internees were released after registration.⁴⁷ Considerable power was concentrated in the hands of these locally appointed registrars, leading to wide discrepancies in rates of internment.

As many as 5,000 of the internees may have been Ukrainian in origin; many of those registered as enemy aliens would also have been Ukrainian.⁴⁸ Lubomyr Luciuk has described how internees at the less comfortable of the internment camps were required to construct the camps, and build roads, and eventually, when labour was needed, to work for industry, government and the railways.⁴⁹ As well as the demanding physical labour, the internees suffered in some cases from rough treatment by the guards, censorship of their mail, and the dispiriting effects of the confinement itself. There was a riot in the Kapuskasing camp, a hunger strike in Sydney, escape attempts, suicides, and 107 deaths.⁵⁰

The Civil Liberties Commission of the Ukrainian Canadian Committee has been seeking an acknowledgement and redress of this mistreatment.⁵¹ An impetus to these efforts was given on September 27, 1991, when Peter Milliken, Liberal Member of Parliament, secured unanimous consent of the House of Commons for his Private Members' motion:

45 *Supra* note 40, paras. 5, 6.

46 *Supra* note 18 at 436.

47 *Supra* note 44 at 44, 49. See other data at 96.

48 L. Luciuk *A Time for Atonement: Canada's First National Internment Operations and the Ukrainian Canadians 1914-1920* (Kingston: Limestone Press, 1988) at 7.

49 *Ibid.* at 8.

50 *Ibid.* at 19-20.

51 *Ibid.* at 28.

That, in the opinion of this House, the government should:

(1) acknowledge that the internment, disenfranchisement and related repressive measures taken against Canadians of Ukrainian origin between 1914 and 1920 were unwarranted and unjust and contrary to the principles now adopted and reflected in our Charter of Rights and Freedoms;

(2) instruct Parks Canada to erect historical markers at each of the 26 concentration camps where Ukrainians were interned and undertake the archaeological restoration of the Castle Mountain internment camp in Banff National Park with a permanent historical educational exhibit; and

(3) undertake negotiations with the redress committee of the Civil Liberties Commission of the Ukrainian Canadian Congress on the question of redress to the community.⁵²

Numerous regulations were passed prohibiting the possession of firearms and other ammunition, and restricting movement, naturalization, homesteading, and parole.⁵³ By 1916, 2,000 people were still interned. The rest had been released as soon as work could be found -- work which did not deprive native-born Canadians of work, yet which was both permanent and at current wages. These people feared for their own safety, and the government recognized that such fears were well-grounded. Many such individuals were unable to get or keep jobs, because of public resentment, fear and distaste. These factors, at least as much as the desire to protect the country from potential subversives, led the government to adopt the policy of internment. For those thousands of people interned on this paternalistic basis by the government, the government's promises in the proclamations and public notice must have seemed bitterly ironic.

James Carruthers has concluded:

But an almost universally condoned level of racism was given momentum by the war. The rationale for interning Canada's enemy aliens was evolutionary and in some respects warranted, but rarely, it seems, did it involve the protection of the Canadian war effort from direct interference at home. The alien became a problem for the government not because he was disloyal -- in fact the evidence indicates the contrary -- but because many

52 *House of Commons Debates* (27 September 1991) at 2867; see also debate by other Members at 2869-2874.

53 Order in Council of September 3, 1914; Order in Council of November 20, 1914; Orders in Council of October 28, 1914, par. 11, June 26, 1915, July 17, 1917; Order in Council S.C. 1917, pp. lxxxix, xcvi, civ, cix; Order in Council S.C. 1917, p. lxxvii.

native-born Canadians suspected him of being disloyal.⁵⁴

Internment led not only to loss of freedom but also to loss of civil rights. Most of the World War I cases under the *War Measures Act* concerned the disputed right to bring civil actions. Many of the reported decisions were based on the guarantee of rights in the proclamations, deciding that, until an alien was interned and/or a definite act of hostility was proved, he or she was not an enemy and retained the capacity to sue.⁵⁵ When an internee was paroled, the individual recovered all civil rights.⁵⁶

In 1917, the *War-time Elections Act*⁵⁷ disqualified from voting those naturalized Canadians of alien enemy birth or of European birth whose mother tongue was an enemy language, with some exceptions. The Act permitted certain women to vote -- women who were "qualified as to age, race and residence," who were the wives, widows, mothers, sisters or daughters of serving military personnel or men killed in action or honourably discharged.⁵⁸ In other words, the *Act* limited one of the democratic rights, the right to vote, on the basis of national origin. At the same time, the gender prohibition was relaxed, but only for those women who met the other criteria, including race and, in addition, had a family relationship with a veteran. This *Act* also provided an exemption from combatant military service for persons disqualified from voting, and their minor sons.⁵⁹ In *Blanshay v. Piché*,⁶⁰ it was held that naturalized Canadians who lost their right to

⁵⁴ *Supra* note 44 at 47-48.

⁵⁵ See *inter alia*, *Re Herzfeld* (1914), 46 C.S. 281; *Viola v. McKenzie Mann & Co.* (1915), 24 D.L.R. 208, 24 B.R. 31; *Gusetu v. Laing* (1915), 24 C.C.C. 427, 48 C.S. 427; *Ragusz v. Montreal Harbour Commission* (1916), 30 D.L.R. 662, 26 B.R. 87; *Cremidas v. B.C. Electric Ry. Co.* (1919), 27 B.C.R. 232.

⁵⁶ *Fabry v. Findlay* (1916), 50 C.S. 14.

⁵⁷ S.C. 1917, c. 39, s. 2(d).

⁵⁸ *Ibid.* s. 1(d).

⁵⁹ *Ibid.* s. 2(e).

⁶⁰ (1918), 32 C.C.C. 151 (Que. Sup. Ct.). Since this disqualification was not an exemption to the *Military Service Act*, the April 20 order in council cancelling exemptions did not apply. See the next section for a discussion of the *habeas corpus* aspects.

vote were no longer eligible to be conscripted. The decision was based on the view that eligibility for conscription depended on naturalization. Since the only right naturalization conferred was the right to vote, removal of the right also removed the responsibility. Or, as Monet J. put it: "no vote, no gun."⁶¹

D. *Habeas Corpus*

When the *War Measures Act* was introduced in the House for first reading, section 4 read:

... that no person held for deportation or under arrest or detention as an alien enemy or upon suspicion, or to prevent his departure from Canada, shall be released upon bail or otherwise discharged or tried without the consent of the Minister of Justice, and that every order and warrant made or issued by any minister under such legislation, or Order in Council or regulation thereunder, shall be conclusive evidence of all statements and matters therein made or contained, and no court or judge shall inquire into or make any order in respect thereto.⁶²

William Pugsley,⁶³ a Liberal from Saint John, New Brunswick, was the only person⁶⁴ to object to the Bill in the debate on first reading:

Animated as we all are by a desire to facilitate in every way the despatch of measures which the Government deem necessary on this occasion, I trust that my hon. friend [Hon. C.J. Doherty, Minister of Justice, who introduced the bill] will not think I am unduly delaying the proceedings if I venture to make some remarks with regard to a portion of the resolution now under consideration ... Section 4 really suspends the *Habeas Corpus Act*. It does not say that in words, but that is its effect. It takes away, with regard to persons who may come under its provisions, the right of every man to appeal to the

61 *Ibid.* at 153.

62 *House of Commons Debates*, (19 August 1914) at 20.

63 William Pugsley was a former Speaker of the New Brunswick House of Assembly, Solicitor General, Attorney-General, and Premier for a short period, as well as Public Works Minister from his election to the House of Commons in 1907 until the defeat of the Laurier administration in 1911.

64 The tenor of the debate can be gleaned from Laurier's biographer: "He [Laurier] withheld nothing, qualified nothing in his total support of the war, and in the four days of the special session he towered beside Borden as the pillar of a united nation." J. Schull, *Laurier: The First Canadian* (Toronto: Macmillan of Canada, 1965) at 557.

courts, and to have those who are depriving him of his liberty compelled to show before a court or a judge the reason why he is being deprived of his liberty and is being kept in prison. That is a pretty serious enactment to make, because there is no measure which English people regard with greater appreciation and of which they are more jealous and have been for centuries than the *Habeas Corpus Act*; and I think that, before that Act is suspended and the liberty of the subject is left entirely in the hands of the minister for the time being, very strong reasons ought to be shown for it ... That resolution strikes at the dearest liberties of a British subject. It may be that the occasion has arisen which demands such extraordinary legislation. I think it will be incumbent upon my hon. friend to show the committee that such occasion has arisen, and that in the interests of Canada and of the Empire this extraordinary enactment should be made....⁶⁵

In reply, the Minister of Justice, Mr. Doherty announced that it was proposed that the Bill be referred to a special committee after second reading, and said:

I realize fully the gravity of the disposition which my hon. friend has read, and I may say that it is only after giving it very serious consideration that we have put it forward....⁶⁶

On August 21, 1914, the Minister indicated that the committee⁶⁷ had reported the bill with certain amendments.⁶⁸ The Bill was given third reading after only a short exchange between the Prime Minister Robert Borden and a member interested in its effect on patients.⁶⁹ The amended bill no longer contained the offensive clause suspending *habeas corpus*.⁷⁰

In 1915, two cases concerning the rights of alien enemies to *habeas corpus* came before the courts. In *Re Beranek*,⁷¹ section 11⁷² of the

65 *Supra* note 62 at 21-22.

66 *Ibid.* at 22.

67 The committee members were: Sir Robert Borden; Sir Wilfrid Laurier; Sir George Foster; Hon. Louis Philippe Pelletier; Hon. A.K. Maclean; Hon. Charles Doherty; and Hon. William Pugsley.

68 *House of Commons Debates* (21 August 1914) at 49.

69 *Ibid.* at 51. The entire exchange occupies only six column inches in *Hansard*.

70 The second half of the section was deleted beginning with "and that every order or warrant." See *infra* note 72 for the wording.

71 (1915), 24 C.C.C. 252 (Ont. H.C.).

War Measures Act was considered determinative: the Court could interfere only where there was bad faith or excess of jurisdiction. In that case, Beranek was held as an alien enemy but claimed to be a British subject by naturalization. In *Re Gusetu*,⁷³ the Quebec Superior Court decided that the judgment of the registrar of alien enemies with regard to the necessity of internment was not reviewable on *habeas corpus* without the consent of the Minister of Justice under section 11, following *Re Beranek*. In addition, an alien enemy had no right at common law to a writ of *habeas corpus*,⁷⁴ since it is a prerogative writ by which the King has a right to enquire into the causes for which any of his subjects is deprived of liberty. Both judgments are worth reading as examples of judicial deference: "It is not a time when the prisoner is to have the benefit of the doubt, it is a time when, in all things great and small, the country must have every possible advantage...."⁷⁵

In April, 1918, the executive branch tried to use its power to promulgate regulations under the *War Measures Act* to remove the right to *habeas corpus* and to amend a statute of Parliament.

On April 30, 1918, the government attempted to suspend *habeas corpus* by order in council, in relation to all matters concerning the military authority. This attempt followed on the Quebec City conscription riots over Easter weekend and the government's attempted removal by order in council of exemptions from the *Military Service Act*.

On April 20, 1918, the government, by order in council, purported to remove the exemptions to the *Military Service Act*, thus increasing the number of young men eligible for conscription. A secret session of

72 Section 11 of the *War Measures Act*, 1914, *supra* note 1 read as follows: "No person who is held for deportation under this Act or under any regulation made thereunder, or is under arrest or detention as an alien enemy, or upon suspicion that he is an alien enemy, or to prevent his departure from Canada, shall be released upon bail or otherwise discharged or tried, without the consent of the Minister of Justice." This is the amended version of section 4.

73 *Supra* note 55.

74 *R. v. Schiever* (1759), 97 E.R. 551 (K.B.).

75 *Re Beranek*, *supra* note 71 at 254. For an opposing view see *Lavoie v. O'Dowd* (1919), [1920] 29 B.R. 178.

Parliament was held in which Laurier denounced the amendment of an Act by Order in Council as a "departure from the principle of constitutional government." Both the Alberta Supreme Court, Appellate Division, and the Quebec Superior Court found that the government was unable to override acts of Parliament.⁷⁶ In *Re Lewis*,⁷⁷ Stuart J. pointed out that Parliament must not have intended the *War Measures Act* to operate outside statutes, including the *Militia Act*, which gave extensive powers to the Governor in Council, or Parliament would have inserted a "notwithstanding" clause into the *War Measures Act*. Furthermore, he could find no attempt in Britain, "where bombs are dropping from zeppelins and the guns of war can be heard, to use the powers given in the *Defence of the Realm Acts* to make orders and regulations in order to infringe upon and modify the specific acts of Parliament which dealt with the question of the compulsory calling of men into the army. And the reason is, I think, that Great Britain is the home of constitutional liberty."⁷⁸ Although Parliament affirmed the order in council through a resolution, it was nothing more than a confirmation of the executive's action. Beck J. pointed out that the *Bill of Rights*⁷⁹ expressly rejected the Crown's assumption of the power to dispense with and suspend the laws and their execution, without Parliament's consent. An enactment is the legitimate form of consent; a resolution of both Houses is only a matter of internal management.⁸⁰

The government issued P.C. 1697 on July 5, 1918, providing that the earlier order of April 20 should continue to operate notwithstanding the judicial decision in *Re Lewis* or any other court decision.⁸¹ In *Re Gray*,⁸² a *habeas corpus* application, the Supreme Court of Canada

76 *Re Lewis* (1918), 41 D.L.R. 1, 13 Alta. L.R. 423 (Alta. S.C., App. Div.); *Pertman v. Piché* (1918), 54 C.S. 170.

77 *Lewis*, *Ibid.* at 11.

78 *Ibid.* at 12-13.

79 1 William & Mary, (1688) c. II.

80 *Lewis*, *supra* note 76 at 15.

81 *Supra* note 18 at 441-442; P.C. 1697, July 5, 1918, *Canada Gazette*, July-September, 1918, at 252.

82 (1918), 57 S.C.R. 150.

held in a 4:2 decision that the orders were not *ultra vires*, as Parliament had the power and intended to confer these wide powers, under section 6, on the executive. As Anglin J. said, "extraordinary times ... necessitate the taking of extraordinary measures."⁸³ Parliament may delegate its powers, within reasonable limits, to cabinet but may not abdicate its functions.⁸⁴ As Duff J. stated:

It is a very extravagant description of this enactment to say that it professes (on any construction of it) to delegate to the Governor-in-council the whole legislative authority of parliament. The authority devolving upon the Governor-in-council is ... strictly conditioned in two respects: First -- It is exercisable during war only. Secondly -- The measures passed under it must be such as the Governor-in-council deems advisable by reason of war ... There is no attempt to substitute the executive for parliament in the sense of disturbing the existing balance of constitutional authority by aggrandizing the prerogative at the expense of the legislature ... The true view of the effect of this type of legislation is that the subordinate body in which the law-making authority is vested by it is intended to act as the agent or organ of the legislature and that the acts of the agent take effect by virtue of the antecedent legislative declaration (express or implied) that they shall have the force of law. *Maitland's Constitutional History*, pp. 1, 15 *et seq.*⁸⁵

In other words, as long as it acted within its substantive jurisdiction and with good faith, the executive had supreme power. "[P]owers, however wide, if conferred in [clear] language ... should [not] be restricted."⁸⁶ Its power to change the law -- either the common law or statute law -- when necessary for public safety was not to be denied, in the opinion of Chief Justice Fitzpatrick.

Taken to its extreme, this principle would permit the executive to amend the *War Measures Act* itself, in this way ensuring that no order was *ultra vires*. The Supreme Court's interpretation made the *War Measures Act* resemble an abdication of its powers by Parliament rather than a mere delegation. Mr. Justice Idington, with the concurrence of Brodeur J., wrote a strong dissenting judgment pointing out the enormity of the consequences: "a wholesale surrender of the will of the

83 *Ibid.* at 181-182, *per* Anglin J., Fitzpatrick C.J. and Davies J., concurring.

84 *Ibid.* at 157, *per* Fitzpatrick C.J.

85 *Ibid.* at 170.

86 *Ibid.* at 182, *per* Anglin J.

people to any autocratic power is exactly what we are fighting against."⁸⁷

The principle of the separation of powers between the three branches of government is fundamental. On July 5, 1918, Mr. Justice Bruneau of the Quebec Superior Court handed down the decision in *Perlman v. Piché*,⁸⁸ finding that section 5 of the order in council, suspending recourse to *habeas corpus*, was *ultra vires* because the executive was not authorized to suspend the remedy under the authority of the *War Measures Act*, the *Military Service Act* or any other act. Only Parliament could authorize the suspension of *habeas corpus*.

On August 6th, 1918, Mr. Justice Monet of the Quebec Superior Court gave his judgment in *Blanshay v. Piché*.⁸⁹ He began by stating that section 6 of the *War Measures Act* did not empower the executive to do anything and everything. In his opinion, if it had been Parliament's intention to abolish *habeas corpus*, then that remedy would have been enumerated along with the matters of lesser importance that were listed. He distinguished the Supreme Court of Canada's decision in *Re Gray*⁹⁰ on the following grounds. First, the judgment said nothing about *habeas corpus*, a right of such importance that it would have to have been mentioned specifically in order for the judgment to apply to it. The orders in council in question in *Re Gray* concerned the exemptions to the *Military Service Act*, not the *habeas corpus* provisions. Second, the order in council in question in the *Gray* case included the words "subject to the approval of both Houses." He agreed with Anglin J., writing for the majority in *Re Gray*, who stated that while the phrase did not add anything to the legal force as enactments, the phrase did make it clear that the executive was not taking advantage of the powers conferred by Parliament. With regard to *habeas corpus*, Parliament had expressed no such opinion. Third, Mr. Justice Monet stated that *habeas corpus* was of such importance that, had an attempt been made to take it away, a debate would have been the result:

... it is because there always have been, and because there are and always will be brutes,

87 *Ibid.* at 165, *per* Idington J., dissenting, Brodeur J. concurring.

88 *Supra* note 76.

89 *Supra* note 60.

90 *Supra* note 82.

that the writ of habeas corpus was ordained in order to prevent injustice by the stronger against the weaker. As for me, I do not believe that the representatives of the people in Parliament in 1914 intended to substitute for the ermine of the magistrate, the khaki of the soldier, even of the most respectable soldier....⁹¹

Finally, he concluded that even if section 6 included this mandate, its exercise was void under the *Colonial Laws Validity Act*⁹², since the right to abolish *habeas corpus* was reserved to the Imperial Parliament.

In this way, a strong case in favour of *habeas corpus* was advanced. However, the precedent set in *Re Gray* by the Supreme Court of Canada stands as the leading case on the ability of cabinet to amend statutory law so as to infringe the liberty of the subject, even where Parliament has given authority in broad, but not precise, terms. This troubling precedent may come back to haunt us.

E. Other Provisions

The year before, the government had purported to amend the *Criminal Code* by order in council on three occasions; however, these issues were not the sensitive ones that conscription was to become. On February 24, 1917,⁹³ cabinet amended a section relating to the War Departments. On June 7, 1917,⁹⁴ in view of the "desirability of encouraging in every way possible thrift and economy among the people of Canada and of taking steps to prevent as far as possible extravagant and unnecessary expenditure," it removed the exception in favour of horse-racing in section 235 which dealt with betting, pool-selling and gambling. On September 21, 1917,⁹⁵ it prohibited unlawful assemblies for the purposes of training or drilling.

In the same month as the executive was rescinding the conscription

⁹¹ *Supra* note 60 at 162.

⁹² A similar argument was unsuccessful in *Co-operative Committee on Japanese Canadians v. Attorney General for Canada*, [1947] A.C. 87 (J.C.P.C.).

⁹³ P.C. 505, February 24, 1917, S.C. 1918, p. xxxiv.

⁹⁴ P.C. 1452, June 7, 1917, S.C. 1918, p. xxxiv.

⁹⁵ P.C. 2634, September 21, 1917, S.C. 1918, p. xxxiv.

exemptions and attempting to suspend *habeas corpus*, the government issued the *Utilization of Human Energy Order* requiring that every male person residing in the Dominion of Canada should be regularly engaged in some useful⁹⁶ occupation.⁹⁷

to prevent persons capable of useful work from remaining in idleness at a time when the country most urgently requires the service of all human energy available.

Although the concept of this order seems unusual now that full employment is considered economically impractical, it should be noted that the labour shortage was severe in 1918 and that the government had no indication of how long the war was to last. Another gender-specific provision was the order prohibiting "women and girls, and children under the age of twelve years" from leaving Canada on a ship which would enter a war zone of enemy submarine activity around the British Isles or Europe.⁹⁸

Earlier in the War, in order to protect war-time production from strikes, the government had provided that the *Industrial Disputes Investigation Act*, 1910, except s. 63, was to apply to employer-employee disputes in war industries if the dispute threatened to result in a strike or walk-out.⁹⁹ On October 11, 1918, it was made an offence to incite or participate in a strike or lockout in any industry to which the *Act* was applicable, and for an employer to fire an employee for union membership or activities.¹⁰⁰

Other measures were enacted under the *War Measures Act*. The wartime boards, beginning in 1916 with the Cost of Living Commissioner, were only partly successful. In 1917, the Food

96 In *Re Salhani* (1918), 31 C.C.C. 7, 25 R. de Jur. 17 (K.B.), the decision that the business of keeping a pool-room was not "useful" was upheld.

97 *Utilization of Human Energy Order*, April 4, 1918. The penalty was \$100 and, in default, 6 months with hard labour. This section was amended on August 5, 1918, to a penalty of \$500 or three months or both. The amendment also added a reverse onus: the accused had to establish regular engagement in a useful occupation.

98 Proclamation of February 20, 1917, S.C. 1917, pp. cii-ciii.

99 Order in Council of March 23, 1916.

100 Order in Council of October 11, 1918. A Board of Appeal for labour disputes was set up on July 11, 1918; this order was amended May 1, 1919.

Controller was created and, in 1918, the War Trade Board was formed to regulate the import, export and allocation of scarce materials.¹⁰¹ According to Donald Creighton, they aroused but did not satisfy the "confused general demand for an equitable control of the whole enterprise of the war."¹⁰² Prohibition of alcohol was instituted gradually and largely for economic reasons.¹⁰³ The *Defence of Canada Order*¹⁰⁴ consolidated the regulations relating directly to defence. One is worthy of note: "No woman who is suffering from venereal disease in a communicable form shall have sexual intercourse with any member of His Majesty's forces or solicit or invite any member of the said forces to have sexual intercourse with her."¹⁰⁵

An order in council was made on January 29, 1920, purportedly to confer on the Paper Controller jurisdiction to make a certain order. In *Price Brothers & Co. v. Board of Commerce of Canada*,¹⁰⁶ the order was held to be *ultra vires* as not falling within section 6 of the *War Measures Act*. The excess of jurisdiction was found on various grounds by the Supreme Court justices: the Governor-in-Council did not determine that the measure was necessary for the war, as indicated by the preamble (*per* Duff J.); similarly, common knowledge indicated that the Governor-in-Council could not have deemed it necessary (*per* Anglin J.); the powers exercised by the Paper Controller were broader than those in section 6 (*per* Idington and Anglin JJ.); since an order in council had been made already, stating that the war for the purposes of the *War Measures Act* had been concluded, the government must have made a mistake (rather than have acted in bad faith) in thinking that it

101 *Cost of Living Order* 1918, S.C. xxxiv and Order of December 11, 1918.

102 *Supra* note 4 at 447.

103 Orders in Council of November 2, 1917; December 22, 1917; March 11, 1918; February 8, 1919; February 24, 1919; April 12, 1919. It was also instituted by provincial statute: *The Ontario Temperance Act*, S.O. 1916, c. 50.

104 April 10, 1917.

105 This Order was added as s. 45a on June 12, 1918. Section 45 dealt with endangering the safety of troops or guards on the railways. The general penalty section, as amended May 25, 1917, applied: \$5,000 or 5 years, or both. A version of this order was added to the *Criminal Code* as s. 316A(1), penalizing anyone who knowingly or by culpable negligence passes on venereal disease. S.C. 1919, c. 46.

106 (1920), 60 S.C.R. 265.

retained its legislative powers under section 6 until the peace proclamation (*per* Anglin J.).

The case of *Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co.*¹⁰⁷ has been considered by subsequent courts to have settled the issue of the government's power to determine when emergency measures were necessary. In Viscount Haldane's words:

No authority other than the central Government is in a position to deal with a problem which is essentially one of statesmanship. It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes *ultra vires* when it is no longer called for. In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. *But very clear evidence that the crisis had wholly passed away* would be required to justify the judiciary, even when the question raised was one of *ultra vires* which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite.¹⁰⁸

The Privy Council found that, although the order of December, 1919, repealed all orders and regulations depending for their sanction on section 6, the order expressly excepted those relating to paper control, among others concerned with the consequential effects of war. Viscount Haldane concluded: "It is enough to say that there is no clear and unmistakable evidence that the Government was in error in thinking that the necessity was still in existence at the dates on which the action in question was taken by the Paper Control Tribunal."¹⁰⁹

This judgment effectively created an onus of disproof, requiring the party other than the state to prove the non-existence of an emergency. The passage quoted above has been cited in subsequent cases as determinative of the issue of whether an emergency existed. Until *Gagnon v. R.*,¹¹⁰ no case had raised the issue of the legitimacy of the invocation of the *Act* itself. In that case, as discussed below, *Fort Frances* was taken to have precluded any inquiry (which was a questionable interpretation) and the matter was dispensed with in three

107 [1923] A.C. 695, [1923] 3 D.L.R. 629 (J.C.P.C.), affirming, on other grounds, 52 O.L.R. 118, [1923] 3 D.L.R. 199.

108 *Ibid.* at 706 (emphasis added).

109 *Ibid.* at 707.

110 (1971), 14 C.R.N.S. 321 (Que. C.A.).

lines. In effect, *Gagnon* made the principle in *Fort Frances* even more stringent for parties challenging the exercise of state power.

At the end of World War I, the *War Measures Act* "remained lying forgotten in its lair in the statute book, ready to spring out once more at the opening of the second war and at that time to father an even more stringent and arbitrary set of '*Defence of Canada Regulations*.'"¹¹¹

The powers were not used to their fullest extent during World War I and its aftermath. But they were misused, seriously infringing civil liberties - in removing the exemptions from the *Military Service Act*, in interning alien enemies, in creating unlawful associations, in banning foreign publications, and in attempting to dispense with *habeas corpus*.

It is true that the result was not despotic use of the wide powers granted. Most commentators attribute this result to the calibre of the individuals in charge. Clearly it was not the result of the operation of the political system since the opposition served more as a lap-dog than as a watch-dog until 1917, when conscription changed the political environment. The press as well declined any role as responsible critic of government.

The judiciary acted with deference to the executive in most instances, although *habeas corpus* had been preserved in the face of cabinet's attempt to remove it. The judiciary established a presumption of legitimate use of the emergency power, rebuttable only under the "very clear evidence" test. Finally, the principle was established that orders in council under the emergency power were capable of amending Acts of Parliament.

111 A.R.M. Lower, *Colony to Nation* (Toronto: Longmans, Green & Co., 1946), at 470.

II. World War II

The *Defence of Canada Regulations* were brought into force on September 3, 1939, and continued throughout the war, more or less intact. An interdepartmental committee¹¹² of civil servants from departments that would be primarily involved, including a representative of the R.C.M.P., drafted the regulations.

The *War Measures Act* itself was brought into force again without debate. On September 1, 1939, a Proclamation was issued declaring that a state of "apprehended war exists and has existed as from the twenty-fifth day of August."¹¹³ On September 3, the *Defence of Canada Regulations*, were enacted under section 3 of the *War Measures Act*. Parliament was called into session on September 7. In fact, no debate was held until June, 1940, when it was proposed that a special committee be struck to examine and make recommendations concerning the *Defence of Canada Regulations*.

The principal regulations, from the point of view of civil liberties, dealt with censorship, preventive detention, advisory committees before whom internees could appear, enemy alien internment, prohibited communications, criminal procedure changes, secret trials, and the prohibition of subversive organizations.¹¹⁴

A. Censorship

As in the First World War, the government imposed censorship.¹¹⁵ The Minister could restrict or prevent publication, or could require that the item be submitted to an authorized person before it was published.

¹¹² The committee was organized in March, 1938, under the authority of P.C. 531, March 14, 1938.

¹¹³ *Proclamation and Orders in Council Passed under the Authority of the War Measures Act*, Vol I. (Ottawa, 1940) at 19-20.

¹¹⁴ Ramsay Cook's M.A. thesis was an invaluable source of material on this period: "Canadian Liberalism in Wartime: A Study of the *Defence of Canada Regulations* and Some Canadian Attitudes to Civil Liberties in Wartime 1939-1945" M.A. Thesis, Queen's University, 1955.

¹¹⁵ *Defence of Canada Regulations*, Regulation 15.

A Board of Censors was created, along with five press censorship offices from whom editors could seek advice. Further inducement to self-censorship was provided by supplying editors with copies of the regulation.

A significant constraining feature of the censorship provision was the absence of a *mens rea* requirement. In the important case of *Yasny v. Lapointe*,¹¹⁶ the Secretary of State, Mr. Lapointe, prohibited publication of the Russian language paper, *Kanadsky Gudok* ("Canadian Whistle"). He relied on the opinion of the R.C.M.P. that the publication had been disseminating subversive and pro-Nazi propaganda, and made no investigation himself. The *certiorari* application was denied:

The means the Minister may take to satisfy himself that the case is one for action under Regulation 15 must be in his own discretion, with responsibility only to Parliament as hereinafter mentioned. To give effect to this Act and to perform his duty under the Regulation, the Minister must necessarily give heed to the instruments of law and order which Parliament has provided."¹¹⁷

He must be able to rely on sources of information, including the R.C.M.P. Since he was acting in his ministerial capacity, he was responsible only to Parliament. Trueman J.A. dissented, stating that *certiorari* was not limited to judicial or quasi-judicial decisions, but was available whenever individuals' rights were being affected and that the war did not affect the judicial role in assessing the executive's conduct with respect to law and the liberty of the subject.¹¹⁸ In his opinion the order in question should have been quashed since it failed to state on its face that the Minister was satisfied that its publication was prejudicial to the state or the war effort.

Reginald Whitaker has discussed how in the pre-war period when it was clear that war would be against the Axis, the R.C.M.P. focused its

116 (1940), 74 C.C.C. 29, [1940] 3 D.L.R. 204, 2 W.W.R. 372 (Man. C.A.). See also D.M. Gordon, "Case Comment on *Yasny v. Lapointe*" (1940) 18 C.B.R. 732; James Francis, "The War Measures Act: A Summary of the Cases Reported" (1941) 19 C.B.R. 453.

117 *Ibid.* at 35, *per* Robson J.A., Prendergast C.J.M. and Dennistoun J.A. (who also wrote a separate judgment) concurring.

118 *Ibid.* at 32.

undercover activities against the left, instead of against German and Italian pro-fascist groups.¹¹⁹ Under the *Defence of Canada Regulations*, authorizing censorship, outlawing associations, and permitting arrest and internment, these undercover activities increased. Communist papers were the first to be closed down. By March, 1941, 325 papers and periodicals were banned; of these, only nine originated in Canada. Other left-leaning organizations including trade unions and certain Ukrainian organizations were banned, their leaders interned, and their property seized.

B. *Preventive Detention*

Regulation 21 created preventive detention. The Minister of Justice was given the power to order the arrest and internment of any person suspected of being an enemy of the state. He was empowered to deny the rights of *habeas corpus* and public trial.¹²⁰ This provision was the most blatant excess in the *Defence of Canada Regulations*. In total, 1,200 were interned under this regulation, 870 of them by March 4, 1941.¹²¹

Both the extent of power exercised by the executive and the fact that the Minister of Justice had sole discretion in the making of Regulation 21 decisions were illustrated by the internment for three years of Camillien Houde, Mayor of Montreal, after he issued a statement opposing conscription and urging resistance to it. An administrative tribunal was entrusted with the responsibility of recommending release, when in their judgment the internee constituted no threat. The tribunal did in fact recommend his release, but the government refused to

119 R. Whitaker, "Official Repression of Communism During World War II" (1986) 17 *Labour/Le Travail* 135.

120 The cases on this regulation all concerned the form of the order. See, for instance, *Re Penner and Nawizowski*, [1940] 4 D.L.R. 428, [1940] 3 W.W.R. 159, 74 C.C.C. 235, affirmed without written reasons [1940] 4 D.L.R. 800 (Man. C.A.), the dismissal of a *habeas corpus* application.

121 *House of Commons Debates* (4 March 1941) at 1218.

release him until after the election.¹²² The internment was clearly politically motivated. The press censor's attempt, backed subsequently by the government, to suppress publication of the statement aroused the newspapers to a minimal awareness of their vulnerability.¹²³ Some members of the Interdepartmental Committee had expressed doubts about the power, seeing it as an "unnecessary" restriction on civil liberties. But it was two years before any checks were placed on the power, in contrast with the similar British order which was limited almost immediately.¹²⁴

C. *Advisory Committee*

Regulation 22 provided for an advisory committee before whom the internee could appear. The due process protection was minimal or illusory. The Advisory Committee was not a court, the internee was not guaranteed access to the information on which the decision had been made, and the internee, instead of being presumed innocent, had to prove the charge false. Moreover, the Minister was not bound by the Committee's recommendation and could refuse, in his discretion, to release the internee.

On June 11, 1940, a Parliamentary Committee was given the responsibility for reviewing the regulations and making recommendations for changes. The Committee consisted of nine Liberals (including Mr. Ilsley, the Minister of Finance, who chaired the Committee), three Conservatives (including John Diefenbaker), one Independent Liberal, one C.C.F. member (M.J. Coldwell) and one Socred. The Committee was given access to papers and records pertaining to the regulations and was empowered to call witnesses under oath. Significantly though, the Committee was denied access to any files or documents relating to internments.¹²⁵ It held twenty-five

122 H.R.S. Ryan, who interviewed Mr. M.A. Miller, Chairman of that tribunal, provided this information.

123 Cook, *supra* note 114 at 214-215.

124 *Ibid.* at 66.

125 *House of Commons Debates* (27 February 1941) at 1069.

meetings, all *in camera* and without minutes.¹²⁶ The Committee's first two recommendations concerned preventive detention. It was the Committee's view that, at the opening of every session and every four weeks thereafter, the Minister should report on the number of internments, and the number of cases in which he had declined to accept the recommendation of the advisory committee. Secondly, it should be the duty of the advisory committee to inform the internee, within a reasonable time before the hearing, of the grounds for his internment, together with particulars sufficient to enable him to present his case. The report of the Parliamentary Committee was tabled in the House on August 1, 1940, but debate was not allowed. The Minister informed the House that all the recommendations were going to be implemented; this was done on September 12, 1940. In the recommendations adopted subsequently, in 1941, the Justice Minister was required to put before the advisory committee all information concerning internees, except that which it was necessary to withhold for security reasons.

When the war ended, Regulation 21 was revoked, along with Regulations 15, 39, and nine others, on August 16, 1945. But on October 6th,¹²⁷ the Prime Minister and Minister of Justice were given the same powers as they had possessed under Regulation 21, in order to deal with the Gouzenko affair. The evidence acquired in this way, under compulsion, was subsequently used against the defendants in court.¹²⁸ This situation illustrates the ease with which repressive war-time regulations have been resurrected for peace-time use.

126 Cook, *supra* note 114 at 129-133.

127 Order in Council 6444, October 6, 1945.

128 In *R. v. Mazerall* (1946), 86 C.C.C. 321 (Ont. C.A.), the court decided that the common law rule requiring the Crown to establish that a confession made to the police had been made voluntarily was not applicable to statements by a person testifying under oath before a Royal Commission. Section 5 of the *Canada Evidence Act* rendered admissible any of his statements before the Royal Commission to which he made no objection, in spite of the fact that he had been detained without charge and had had no assistance from counsel before testifying.

See also *R. v. Mazerall* (No. 2) (1946), 86 C.C.C. 147 (Ont. H.C.); *Rose v. R.* (1947), 88 C.C.C. 114 (Que. K.B.); *R. v. Lunan* (1947), 88 C.C.C. 191 (Ont. C.A.); *R. v. Smith* (1947), 89 C.C.C. 8 (Ont. C.A.); and *R. v. Harris* (1947), 89 C.C.C. 231 (Ont. C.A.).

D. *Enemy Aliens*

Regulations 24 to 26 dealt with enemy aliens. The Registrar General had the power to intern any alien whose freedom he judged prejudicial to the safety of the state or who failed to meet the requirements of the regulation. Appeal tribunals were created, but their recommendations were sent to the Minister of Justice for final decision.

Japanese Canadians

One of the most infamous acts in Canadian history is the treatment of Japanese Canadian people during the Second World War.

The federal government was well aware of the racial resentment exhibited towards the sizeable Japanese community on the west coast. The 1907 Anti-Japanese Riots in Vancouver, which had been investigated by W.L. Mackenzie King, were one violent instance of a climate that had been hostile to Chinese and Japanese immigrants since 1872. During this period, the British Columbia government attempted to legislate limits on immigration, employment, and voting rights.¹²⁹ Disenfranchisement also produced civil consequences, including exclusion from the professions of law and pharmacy and an inability to secure a hand-logging licence.¹³⁰

In early 1941, Mackenzie King received a report from an advisory committee recommending that citizens of Japanese ancestry be exempted from service in the war. The committee reported that there was "no concrete evidence to support the charges of disloyalty and subversive activity" and that they "on the contrary had an admirable

129 K. V. Ujimoto, "Racism, Discrimination and Internment: Japanese in Canada," in B. Singh Bolaria and Peter S. Li (eds.) *Racial Oppression in Canada* (2nd ed.) (Toronto: Garamond Press, 1988) 127 at 128. See also E. Fowke, "Justice and Japanese Canadians" (January, 1947) 26:312 *Canadian Forum*; K. Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland & Stewart, 1976); H. Sugimoto, *Japanese Immigration, The Vancouver Riots, and Canadian Diplomacy* (New York: Arno Press, 1978); A. Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: Lorimer, 1981); *Cunningham v. Tomey Homma*, [1903] A.C. 151 (J.C.P.C.).

130 *Ibid.* at 138.

record as law-abiding and decently behaved citizens."¹³¹ The government itself feared treasonable and hostile activities on the Pacific coast, particularly the passing of information from coastal lookouts and fishing boats. The government decided to impose registration on all persons of Japanese ancestry three months before the bombing of Pearl Harbour. J.L. Granatstein and Gregory Johnson have provided an assessment of reasons for the actions taken during this period. After examining the available military and R.C.M.P. records, they concluded that the forces had limited capacity to assess the intelligence questions they faced. The authors evaluated the activities of the Japanese Consulate and nature of support by Japanese Canadians of Japan's war in China, within the context of the existing racism among people in British Columbia. As well, they have set out the role of military commanders on the west coast, who were concerned about the presence of Japanese Canadians and their 1,200 fishing vessels, and recommended removal from the coastal region, based on public opinion and military grounds.¹³²

The federal government adopted the policies of resettlement, internment, confiscation of property, and deportation/repatriation of persons of Japanese ancestry. In January, 1942, 22,000 people of Japanese origin lived in B.C. and another 800 lived in the rest of the country, but by July of that year 17,500 were living in B.C., 4,000 on the Prairies and 1,000 in the rest of Canada.¹³³ In 1942, 6,000 people were relocated east of the Rockies; by 1946, the figure was 13,000.¹³⁴

Internment in "departmental housing projects" was authorized in February, 1942, when the Minister of Justice was given the authority to control individuals of Japanese origin in certain protected areas and

131 Adachi, *supra* note 129 at 190.

132 J.L. Granatstein and G.A. Johnson, "The Evacuation of the Japanese Canadians, 1942: A Realist Critique of the Received Version" in N. Hillmer, B. Kordan and L. Luciuk, eds., *On Guard For Thee; War, Ethnicity and the Canadian State, 1939-1945* (Ottawa: Canadian Committee for the History of the Second World War, Minister of Supply and Services, 1988) 101.

133 Canada, Department of Labour, *Report on Re-Establishment of Japanese in Canada, 1944-1946* (Ottawa: 1947), Table 1, at 25.

134 *Ibid.* Table 5, at 27.

to evacuate all Japanese persons from security areas. By January 1, 1943, 12,000 of the 16,500 Japanese people in British Columbia were in camps.¹³⁵ At the same time, their property was confiscated, including fishing boats and equipment, businesses, and both real and personal property. Although some compensation was made, in many cases it was grossly inadequate¹³⁶ and, at any rate, it did not repair the psychic loss.

More than half of the Japanese people in Canada were Canadian-born: the June, 1941, census reported that 14,000 of a total of 23,000 were Canadian-born, while 6,000 were Japanese nationals and 3,000 were naturalized Canadians.¹³⁷ However, on August 4, 1944, the Prime Minister announced that the government had adopted the policy of deporting disloyal people of Japanese origin, making no distinction on the basis of place of birth; repatriation for those who chose to go to Japan voluntarily; resettlement across the country, in order to avoid undue concentration in British Columbia, which was said to have led to acrimony, bitterness and racial hostility there; and a prohibition on Japanese immigration.¹³⁸ The government favoured entrusting a commission with the sorting out of the purportedly disloyal from the loyal people. British subjects were to lose their citizenship prior to deportation. The government did not put this policy into effect until December 15, 1945, but in the meantime, the Department of Labour conducted a survey in the camps to determine the number of internees who wanted to go to Japan.¹³⁹ By the time of armistice with Japan on

135 *Ibid.* Table 2, at 26.

136 Mackenzie King stated in 1947: "With respect to the Pacific property of persons of Japanese origin who were removed from the coast, and whose property was sold by the Custodian, the government is of the opinion that the sales were made at a fair price. In all cases a complete appraisal was made before disposition. The total of the prices secured is greater in aggregate than the total appraisal value. To ensure, however, the fair treatment promised in 1944, the government is prepared in cases where it can be shown that a sale was made at less than a fair market value to remedy the injustice." Statement January 24, 1947, reprinted *ibid.* at 23. See Fowke, *supra* note 129.

137 *Ibid.* Table 6, at 27.

138 Speech of the Prime Minister, W.L. Mackenzie King to Parliament on August 4, 1944, *ibid.* at 6-8.

139 *Ibid.* at 11-13.

August 31, 1945, 10,000 people had declared their desire to be repatriated, but after the armistice 6,500 requested that their declarations be revoked.¹⁴⁰ Over a third of the adults requesting "repatriation" were Canadian-born and another fifth were naturalized Canadians.¹⁴¹

When the government decided to invoke its policy of deportation, it passed three orders in council,¹⁴² which formed the basis of the dispute in *Co-operative Committee on Japanese Canadians v. Attorney-General for Canada*.¹⁴³ In the end, the government abandoned its policy of deportation and merely arranged and paid for the passage to Japan of those wishing to move on a voluntary basis¹⁴⁴ -- 3,964 people did so.¹⁴⁵

In *Co-operative Committee on Japanese Canadians v. Attorney-General for Canada*,¹⁴⁶ seven arguments were advanced in support of the contention that the three orders in council providing for deportation of Japanese Canadians were *ultra vires*. All were unsuccessful,¹⁴⁷ and

140 *Ibid.* Table 4(a), at 26.

141 *Ibid.* Table 4(b), at 27.

142 P.C. 7355, 7356 and 7357, made on December 15, 1945.

143 [1947] A.C. 87 (J.C.P.C.) *per* Lord Wright. Sir Lyman Duff sat as a member of the court.

144 Statement of the Prime Minister, January 1947, *supra* note 136.

145 *Report on Re-Establishment*, *supra* note 133 at 15.

146 *Supra* note 143.

147 The reasons given by the Privy Council, in response to the Committee's seven arguments were as follows:

(1) The *Colonial Laws Validity Act* was held to be inapplicable because the effectiveness of a statute is measured at the date when the delegated powers are exercised rather than at the date on which the statute was passed. (It is arguable, however, that the intention of Parliament must be read in relation to the limiting statutes in effect at the time; this point formed part of the decision of Monet, J. in *Blanshay v. Piché* (*supra* note 60).)

(2) There was no limitation respecting extra-territorial operation in the *War Measures Act*;

(3) The statute need not be construed in a manner consistent with the principles of international law, since it was passed in contemplation of war. Therefore, construing the statute in that limited manner, "deportation" of native-born Canadians and deprivation of citizenship was legitimate;

(4) The *Colonial Laws Validity Act* did not apply to the orders of the Governor-in-

the orders were found to be *intra vires*. As a result, the Privy Council upheld the executive's deportation orders. In *Korematsu v. United States*, evacuation of Japanese Americans from west coastal areas and internment were found by the United States Supreme Court to be within the war powers of Congress and the President, and permissible under the Constitution.¹⁴⁸ In the United States, the Commission on Wartime Relocation and Internment of Citizens held hearings in 1981, concluding that:

The promulgation of Executive Order 9066 was not justified by military necessity, and the decisions which followed from it -- detention, ending detention and ending exclusion -- were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance of Japanese Americans contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.¹⁴⁹

Laurence Tribe has written in *American Constitutional Law*:

Council. The Committee had argued that, although the orders were law made after the *Statute of Westminster*, they were not law made after that date by the Parliament of Canada and therefore were not exempt from the application of the *Colonial Laws Validity Act*. The Privy Council found that they were laws made by Parliament on a "liberal" construction of the language used. The Supreme Court of Canada had found to the contrary in *R. v. Singer*, [1941] S.C.R. 111, [1941] 1 D.L.R. 753, 15 C.C.C. 1, finding that orders in council were not to be deemed equivalent to an Act of Parliament within the meaning of s. 164 of the *Criminal Code*;

(5) The automatic deportation of wives and children on the deportation of the husband/father was not an example of power exercised for an invalid purpose;

(6) *Fort Frances Pulp and Paper Co. v. Manitoba Free Press Co.*, *supra* note 107, determined the test for an emergency; and

(7) The phrase "of the Japanese race" was not too vague; and therefore the order was not void for vagueness.

148 *Korematsu v. United States* (1944), 323 U.S. 214. The curfew restriction on persons of Japanese ancestry in certain areas had been upheld in *Hirabayashi v. United States* (1943), 320 U.S. 81. See E.G. Hudon, "The Status of Persons of Japanese Ancestry in the United States and Canada during World War II: A Tragedy in Three Parts" (1977) 18 *Cahiers de droit* 61.

149 Report of the Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* (Washington, D.C.: 1982) at 18.

In retrospect, the Supreme Court's tolerance of the wartime excesses of Congress seems wrong, but in retrospect it is also clear that the Court saw no reasonable alternative to deference. This is the paradox of the war powers: because they are exercised in emergency, they are the constitutional grants of authority that the Supreme Court is least likely to limit -- out of deference to superior legislative factfinding, out of prudent awareness of the limits of judicial power, and out of simple unfamiliarity with the issues raised. The judicially illimitable character of the war powers, especially during war itself, is ultimately one of the strongest arguments for strict judicial enforcement of private rights in peacetime. If the judiciary does not remind Congress of its constitutional obligations when such reminder is possible, it is less than likely that Congress will remember to restrain itself when the courts see no practical alternative to silence.¹⁵⁰

It was not until 1988 that a form of compensation was provided to Japanese Canadians for what was uncompensable. On September 22, 1988, Brian Mulroney, the Prime Minister, announced in the House of Commons a redress settlement with the National Association of Japanese Canadians and made a formal apology:

Mr. Speaker, nearly half a century go, in the crisis of wartime, the Government of Canada wrongfully incarcerated, seized the property, and disenfranchised thousands of citizens of Japanese ancestry. We cannot change the past. But we must, as a nation, have the courage to face up to these historical facts ... I know that I speak for Members on all sides of the House today in offering to Japanese Canadians the formal and sincere apology of this Parliament for those past injustices against them, against their families, and against their heritage, and our solemn commitment and undertaking to Canadians of every origin that such violations will never again in this country be countenanced or repeated.¹⁵¹

Among its terms, the agreement included the government acknowledgement, a payment of \$21,000 to each surviving member, \$12 million for the Japanese community, to be administered by the

150 L. H. Tribe, *American Constitutional Law*, 2nd ed. (Mineola, N.Y.: Foundation Press, 1988) at 355, footnotes omitted.

151 *House of Commons Debates* (22 September 1988) at 19499-19500; M. Omatsu *Bittersweet Passage: Redress and the Japanese Canadian Experience* (Toronto: Between The Lines, 1992) at 19-20. Ms. Omatsu, analyzing the Canadian negotiations, stated that, "On August 10, 1988, help came from an unlikely source. The American President Ronald Reagan signed the *Civil Liberties Act*, compensating Japanese Americans for their wartime loss of freedom." (at 18) She noted the irony in the process, in which only the Prime Minister and a few other cabinet members knew the full details of the settlement and the House was uninvolved, this time benefit being received from "enlightened" autocracy. (at 25-26)

National Association of Japanese Canadians, and \$24 million for a Canadian Race Relations Foundation.

E. Prohibited Communications

Regulations 39, 39B, and 39C had great potential for abuse. Regulation 39 prohibited the spread by word of mouth of reports or statements, "false or otherwise, intended or likely to cause disaffection" to His Majesty or to interfere with the success of His Majesty's forces, or which would prejudice the recruiting, training, discipline, or administration of any of His Majesty's forces. Regulation 39A prohibited the same sort of communications in print and added a general prohibition against items "which would or might be prejudicial to the safety of the state or the efficient prosecution of the war."

This section was broadened by virtue of the 1941 committee's recommendations to include the offence of having knowingly in one's possession in quantity¹⁵² any publication containing statements offending against the general prohibition. Prosecutions under Regulation 39 and 39A were to be instituted only by the Attorney General of Canada or the provinces, except in cases of emergency.¹⁵³ In *R. v. Stewart*,¹⁵⁴ the Ontario Court of Appeal determined that *mens rea* was not an essential element of section 39A offences, because the object of the Act and Regulations was public safety during wartime. Stewart, the business manager of *The Clarion* was charged with the offence on the basis of the publication of the 1939 Communist International Manifesto. He had been unaware of the contents until after publication.

On January 17, 1940, immediately before calling the election, the government enacted a good faith defence to prosecution under regulations dealing with statements or publications deemed prejudicial to the safety of the state or the war effort. Some of the opposition

152 In *R. v. Money*, [1941] 1 W.W.R. 93, 75 C.C.C. 402 (B.C. Police Ct.), it was decided that a person was not guilty when he had a number of different Communist books, but only when he possessed a particular book in quantity.

153 *R. v. Paul*, [1944] 1 D.L.R. 145, [1943] 3 W.W.R. 561, 59 B.C.R. 475, 80 C.C.C. 356 (B.C.C.A.).

154 [1940] 1 D.L.R. 689, O.R. 178, 73 C.C.C. 141 (Ont. C.A.).

members -- M.J. Coldwell in particular -- had drawn attention to the fact that they themselves might be prosecuted under these regulations.

Regulation 39A was used to control the dissemination of Communist material. For example, in *R. v. Ravenor*,¹⁵⁵ the proprietor of a Communist bookshop known as the "New Age Book-shop" was convicted. Four expert witnesses from the University of British Columbia and the Vancouver Public Library testified to the academic merit of the books but the County Court Judge discounted this test and said the books' potential effect on the safety of the state was the appropriate test -- "This is War!"¹⁵⁶ The regulation was sometimes taken to extremes, as in the prosecution of the pacifist school teacher Coffin for statements made during class discussions.¹⁵⁷

The most prominent person to be charged under Regulation 39A was George Drew, then leader of the Conservative party in Ontario. After the surrender to the Japanese at Hong Kong in 1941, Lt. Col. Drew charged that the troops sent to Hong Kong had been ill-trained and badly led. The Royal Commission set up by the government in response, chaired by Sir Lyman Duff, concluded that there was no basis for Drew's allegations. Drew responded that many of the facts of the disaster had not been disclosed. The government charged him under Regulation 39A with making a statement prejudicial to the efficient prosecution of the war. Public pressure forced the government to withdraw the prosecution, because it might tend to hamper free

155 [1941] 1 W.W.R. 191, 75 C.C.C. 294 (B.C. Co. Ct.).

156 *Ibid.* at 298.

157 *R. v. Coffin* [1940], 2 W.W.R. 592 (Alta. Police Ct.). The prosecution was supported by the evidence of the students, one of whom had taken notes on the statements over time. Among other criteria employed, the court stated that truth or falsehood was irrelevant and that a person making a statement must take responsibility for its misinterpretation. Citing *Yasny v. Lapointe*, *supra* note 116 at 373, where the Manitoba Court of Appeal said: "In times of peace, the civil rights of the people, the liberty of the subject, the right of free speech and the freedom of the press are entrusted to the courts. In war time this may be changed", he said that the Regulations had made such a change, leaving the courts only to enforce them. However, the Manitoba Court of Appeal reversed the conviction of a parent who wrote to the school board setting out his religious objections to his children saluting the flag and asking that his children, who had been expelled for their refusal to salute, be allowed to attend without being compelled to salute the flag or sing the national anthem. *R. v. Clarke*, [1941] 3 W.W.R. 567, 76 C.C.C. 337, [1941] 4 D.L.R. 299 (Man. C.A.), reversing [1941] 3 W.W.R. 228.

criticism of government policy and action,¹⁵⁸ a conclusion that might be described as an understatement. Perhaps Drew should have considered himself fortunate to have escaped Camillien Houde's treatment for a similar political criticism.

Regulation 39C banned membership in thirty-four illegal organizations, including the Communist Party and, until 1943,¹⁵⁹ the Jehovah's Witnesses. When the offence was first created, a subversive organization was one speaking, publishing, or acting in a manner prejudicial to the war effort. If a member contravened a regulation, the entire membership would be presumed guilty unless it could be proved otherwise. Any judge who found a member guilty could declare the association illegal and any person who continued to be a member or "who advocated or defended the principles or policies of such an organization" would then be an offender.¹⁶⁰ On the basis of the 1941 Committee recommendations, regulation 39C was strengthened to make the membership in an illegal organization or the advocacy of its policies an offence. Any association with the organization would constitute presumptive proof of membership.

When the Soviet Union became an ally, pressure on the government mounted in the press and in Parliament to lift the ban on the Communist Party. The 1942 Special Committee recommended the change but the government ignored that recommendation, as well as all its other recommendations. Instead, the government let it be known that they were releasing the loyal Communists and that the organization itself would still be illegal under section 133 of the *Criminal Code* relating to seditious organizations. Ramsay Cook has speculated that the unwillingness to lift the ban lay in the desire to avoid political repercussions for the Liberals in Quebec.¹⁶¹

The refusal by Justice Minister and Quebec lieutenant Ernest Lapointe to disallow the notorious *Padlock Act* has been attributed by William Kaplan to the pressure of the Quebec Roman Catholic Church,

158 This account is taken from Cook, *supra* note 114 at 230-233.

159 *The Watchtower* organizations, however, continued to be illegal until 1945.

160 A Prince Albert *Herald* newspaper article, criticizing the government for declaring Technocracy Inc. an illegal organization, was held not to fall within s. 39C. *R. v. Demorest* [1941], 1 W.W.R. 225, 75 C.C.C. 360 (Sask. Dist. Ct.).

161 Cook, *supra* note 114 at 249-260.

which saw the *Act* as an effective means of fighting Communism. The risk of alienating the powerful Church hierarchy and thereby losing Quebec's tenuous war commitment was too great.¹⁶²

The effect of the ban on Jehovah's Witnesses, as well as their strenuous efforts to remove it, have been documented by William Kaplan.¹⁶³ For instance, he noted that while the banning of the Communist Party of Canada led to the interning of more than a hundred activists and the flight of the top leadership to the United States, leading to much reduced activity, in contrast the banning of the Jehovah's Witnesses led to an increase in activity.¹⁶⁴ Jehovah's Witnesses were not interned, but were charged with offences, and their children were subject to the requirement of participation in patriotic exercises in school, leading in some cases to suspension from the schools, truancy charges and removal from their parents.¹⁶⁵

F. Criminal Procedure Changes

Search and entry of any premises suspected of containing evidence was authorized, but only with a warrant.¹⁶⁶ Entry could be by force and property could be seized, but again only by warrant.¹⁶⁷ However, any constable or member of the armed forces, while on duty, could arrest without warrant "any person whom he has reasonable ground for suspecting of having committed a war offence."¹⁶⁸

162 W. Kaplan, "The Supreme Court of Canada and the Protection of Minority Dissent: The Case of the Jehovah's Witnesses" (1990) 39 U.N.B.L.J. 65 at 68.

163 W. Kaplan, *State and Salvation* (Toronto: University of Toronto Press, 1989) chs. 3, 4.

164 *Ibid.* at 66.

165 *Ibid.* ch. 5.

166 Reg. 57.

167 Reg. 58.

168 Reg. 60.

G. *Secret Trials*

Secret trials were allowed on application by the prosecution.¹⁶⁹ The right to elect trial by jury was denied, except on the recommendation of the Attorney-General. In practice, summary proceedings were elected in most cases.¹⁷⁰ The penalties on summary conviction were \$500 or 12 months, and on indictment, \$5,000 or five years.

H. *Habeas Corpus*

In *Re Sullivan*,¹⁷¹ it was decided that *habeas corpus* was unavailable to persons detained under Regulation 21. In the court's view, once the Minister of Justice was "satisfied" that the detention was necessary, provided that other matters of due form were observed, that finding was sufficient under Regulation 21. Second, Regulation 50 of the *Regulations Governing Prisoners of War* applied to persons detained under Regulation 21 as "prisoners of war, class 2," and, therefore, *habeas corpus* might issue only with the authority of the Director of Internment Operations. The court followed *Re Beranek*¹⁷² in its interpretation of Regulation 50, and *Re Gray*¹⁷³ in its determination that the Defence of Canada regulations were *intra vires*.

Strong grounds exist for asserting that *Re Sullivan* was wrongly decided: the satisfaction of the Minister did not determine the issue as

¹⁶⁹ Reg. 62.

¹⁷⁰ This policy was adopted because "in these cases it is of great importance that conviction and punishment should follow quickly upon the commission of the offence." These trials were conducted by magistrates or justices of the peace. P.C. 4600, June 7, 1943, as amended by P.C. 6713, Aug. 25, 1944. *Statutory Orders and Regulations Consolidation*, 1949 Vol. v at 4333.

¹⁷¹ *Ex parte Sullivan* (1941), 75 C.C.C. 70, [1941] O.W.N. 49, [1941] 1 D.L.R. 676 (S.C.), affirmed (*sub. nom. Re Sullivan*), [1941] O.R. 417, 78 C.C.C. 400 (Ont. C.A.). Sullivan was allegedly a member of the Communist Party. An objection based on the lack of particulars in the information provided him by the Committee was no more successful: judicial review of information provided under Regulation 22 was precluded.

¹⁷² *Supra* note 71.

¹⁷³ *Supra* note 82.

the Regulation did not include denial of *habeas corpus*; Regulation 50 was not intended to apply to Regulation 21; and following the reasoning in *Perlman v. Piché*¹⁷⁴ and *Blanshay v. Piché*,¹⁷⁵ any regulation purporting to do away with *habeas corpus* was *ultra vires* the *War Measures Act*, as only Parliament had the authority to remove that right and it had not done so.

Both M.J. Coldwell and the Hon. R.B. Hanson, the Leader of the Opposition, commented on the trial court decision in Parliament. Coldwell found it "fantastic", "the antithesis of British and Canadian democracy", and "a most dangerous situation":

...the department and the police accuse and detain. The committee, a judge, reviews and recommends release. But the final decision rests with the accuser. This I submit, is a reversal of all democratic procedure which ought not to be allowed to continue.¹⁷⁶

Mr. Hanson was more ambivalent in his approach, but registered his protest:

...I myself have had some qualms of conscience with respect to the suspension, in effect of the writ of *habeas corpus* .. when Pitt the younger was the Prime Minister of England and the Napoleonic wars were on ... At that time there was the danger of invasion; today there is much graver danger ... But, because of the principle of the safety of the state, Pitt had parliament pass an act suspending the writ of *habeas corpus*. And there is a curious corollary of that action, because the people of England raised a great outcry against the taking away of this sacred right, the principle of which comes down to us from the days of magna carta, and the parliament of England had to reverse the position.¹⁷⁷

174 *Supra* note 76.

175 *Supra* note 60.

176 M.J. Coldwell, *House of Commons Debates* (27 February 1941) at 1067-1072, especially 1068-1069.

177 *House of Commons Debates* (27 February 1941) at 1074. Mr. Hanson went on to say that he had expected the writ of *habeas corpus* to issue in *Re Sullivan*, but that the answer to it would be that the man was in custody under certain provisions of the Defence of Canada regulations. He was satisfied that the decision that the writ should not issue was based on legal principles although he stated that he had been astonished at first that the decision was that the writ should not issue at all. He also commented on his reluctance to vest in any one man sole authority to exercise the discretion for the regulations. (at 1074-1075)

He felt caught in a conundrum, as he believed that the decision in *Re Sullivan* was legally correct, but that the outcome was in principle incorrect.

I. Other limitations

Extensive economic control was imposed under the *War Measures Act* by means of the creation of war boards, the most important of which was the Wartime Prices and Trades Board, which regulated price levels and real property rentals. By order in council, power was delegated to the boards, power which often included regulation-making. By 1943, the Wartime Prices and Trades Board had appointed 68 Administrators and 4 Coordinators, all of whom, in turn, had the power to make orders. By that time, the Board had made 209 orders, and the Administrators 574 orders and amendments.¹⁷⁸

The issue of sub-delegation arose in the *Chemicals Reference*,¹⁷⁹ in which the authority of the Controller of Chemicals to make orders, granted to him by order in council, was questioned. The Court stated that *Re Gray*¹⁸⁰ had decided that the authority vested in the Governor in Council by the *War Measures Act* was legislative in nature, and an order should have the effect of an Act of Parliament. It was asserted by counsel for the party attacking the order that there was no authority in the *War Measures Act* allowing the executive, to whom legislative power was entrusted by Parliament, to delegate this legislative power. The Supreme Court of Canada decided that the executive had the power to sub-delegate, and that Parliament still retained control in its capacity to alter the *Act* or to make ineffective any of the orders in council. The Supreme Court justices reasoned that the delegation of power to the executive was limited only by jurisdiction, that is, what the executive deems necessary for "security, defence, peace, order and welfare," and by duration, that is, during war. This extremely broad interpretation of executive authority under the *War Measures Act* would cover virtually any state action connected to the war. Parliamentary

178 *Reference re Chemical Regulations*, [1943] S.C.R. 1, per Davis J. at 23.

179 *Ibid.*

180 *Supra* note 82.

supremacy was a myth in war-time.

The lack of regular parliamentary review of regulations meant that Parliament's power was nugatory. The only element of review was the annual Special Committee hearings on the Defence of Canada regulations, which were not debated in Parliament. So limited was the notion of review that the first Special Committee had to recommend that the regulations be consolidated, republished, and widely distributed and that all changes be published in the *Canada Gazette*.

*The National Emergency Transitional Powers Act, 1945*¹⁸¹ provided that "on and after that date the war against Germany and Japan shall for the purposes of the War Measures Act be deemed no longer to exist." It also provided that the Governor in Council might order that those orders in council made under the *War Measures Act* and in force immediately before should continue in force as long as the 1945 Act was in force, subject to amendment or revocation under it. The Act was continued in force until May 15, 1947, when it was replaced by *The Continuation of Transitional Measures Act, 1947*,¹⁸² which also provided for the continuation of the orders in council on the same basis.¹⁸³ The 1951 Statute, the *Emergency Powers Act*,¹⁸⁴ did not continue previous orders in council and restricted the power that the Governor in Council had had to interfere with civil liberties. By the time this Act was passed, *The Regulations Act* had been enacted, requiring¹⁸⁵ that orders should be placed before Parliament, within 15 days of publication in the *Canada Gazette* or, if Parliament was not sitting, within fifteen days of the beginning of the next session.

181 S.C. 1945, c. 25.

182 S.C. 1947, c. 16; S.C. 1947-48, c. 5; S.C. 1949, c. 3; S.C. 1950, c. 6.

183 This account is taken from Kerwin, J. in *Re the Validity of the Wartime Leasehold Regulations*, P.C. 9029, [1950] S.C.R. 124.

184 S.C. 1951, c. 5; S.C. 1952-53, c. 33.

185 S.C. 1950, c. 50, section 7.

J. *Defining an Emergency*

The *Japanese Canadians*¹⁸⁶ case concerned regulations under the *National Emergency Transitional Powers Act*. Following *Fort Frances*,¹⁸⁷ the Privy Council stated "very clear evidence" that the emergency has not arisen, or no longer exists, is necessary for the judiciary to overrule the decision of Parliament and, furthermore, that the judiciary should not examine the policy's wisdom or propriety, or the ability of the executive to carry out the emergency provisions. Lord Wright continued:

...It is unnecessary, therefore, for their Lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Orders in question or the arrangements made with a view to their execution.¹⁸⁸

Similarly, in *Re Wartime Leasehold Regulations*,¹⁸⁹ the Supreme Court of Canada followed *Fort Frances* and *Japanese Canadians*. This case is notable for its canvassing, in the seven separate judgments, of what would constitute "very clear evidence." Rinfret C.J. found an indication in the orders in council and acts of Parliament that the exceptional war conditions were continuing. He noted that in some cases it might be so obvious that the legislation was colourable that the court would need no extraneous evidence, but that the issue of colourability should be brought before the court in an ordinary and not a reference case, in most instances.¹⁹⁰ Taschereau J. thought that "common knowledge, to which it is surely permissible to appeal in a case of this kind," as well as the exhibits, led to the irresistible conclusion that the emergency still existed; unmistakeable evidence to the contrary was necessary before the court would be duty-bound to

186 *Supra* note 143.

187 *Supra* note 107.

188 *Ibid.* at 102.

189 [1950] S.C.R. 124.

190 *Ibid.* per Rinfret C.J., at 127-128, citing as an example, *Re the Validity of Section 16 of The Special War Revenue Act*, [1942] S.C.R. 429.

intervene.¹⁹¹ Rand J. indicated that the legislation, rather than the emergency, must determine the question of validity, citing Viscount Simon in the *Canada Temperance Act* case.¹⁹² He too based his decision on the recitals in the statute, common knowledge, and the fact that nothing seriously challenged these. The case is unusual for its canvassing of factors in support of the emergency.

Orders under the *National Emergency Transitional Powers Act* were also declared valid by the Judicial Committee in *Attorney-General for Canada v. Hallet & Carey Ltd.*¹⁹³ Following the *Chemicals Reference*,¹⁹⁴ the court said that it was not within the competence of the courts to canvass the considerations on which the Governor in Council had decided the order was necessary or to ascribe to the order a purpose other than the one it purported to serve. The Privy Council noted instances where orders could be invalidated. First, where powers entrusted for one purpose are used for another forbidden purpose, bad faith can be established.¹⁹⁵ Second, where the order is ambiguous, as in *Price Brothers*, the purpose can be examined. Third, a misconstruction of the enabling act, as shown on the face of the order, provides the basis for invalidation. Finally, the order may fail to comply with the conditions of the Act. In other words, bad faith, ambiguity which indicates bad faith or mistake, clear mistake, and excess of jurisdiction are grounds on which orders may be invalidated.

191 *Ibid.* at 142. Taschereau J. also thought that the impact of the emergency on provincial laws concerning the same matter was that they became inoperative and that provincial jurisdiction was temporarily suspended until the federal government abandoned the field. This statement must be qualified today in light of the increase in the number and importance of concurrent jurisdictions.

192 *Ibid.* at 144, citing *Attorney General for Ontario v. Canada Temperance Federation*, [1946] A.C. 193 (J.C.P.C.) at 206.

193 [1952] A.C. 427 (J.C.P.C.).

194 *Supra* note 178.

195 *Lower Mainland Dairy Products Board v. Turner's Dairy Ltd.*, [1941] S.C.R. 573.

III. *Amendment of the War Measures Act by An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms*¹⁹⁶

In 1960 the *War Measures Act* was amended as part of the Diefenbaker government's efforts to establish a bill of rights. Part I of *An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms* is the *Canadian Bill of Rights*; Part II of the Act amended the *War Measures Act*. Subsection 6(2) provided that sections 3, 4 and 5 of the Act came into force only upon proclamation by the Governor in Council that war, invasion or insurrection, real or apprehended, existed. The proclamation was to be laid before Parliament, immediately if it was sitting, or, if not, within 15 days of the commencement of its next sitting. Subsection 6(3) provided for a debate in Parliament, on a motion by ten members, and affirmed the power of Parliament to revoke the proclamation. Finally, subsection 5 excluded the *War Measures Act* from the operation of the *Canadian Bill of Rights*:

Any act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*.

The section should have been interpreted in light of the preamble which set out, *inter alia*, Parliament's affirmation of the rule of law.

IV. October 1970

At 4:00 a.m. on October 16, 1970, the government of Pierre Trudeau proclaimed the *War Measures Act* in force on the ground that, as of the day before, an apprehended insurrection had existed.

Its imposition in those circumstances illustrated again both the ease with which the normal system of governance could be set aside and the inability of opponents to control the assumption of that power.

The debate as to whether the *Act* should have been proclaimed is too

196 S.C. 1960, c. 44.

complex to analyze in depth in this paper.¹⁹⁷ While all the facts influencing Trudeau and other key actors are still not known, a judgment based on the known facts would not be unfair.¹⁹⁸ Based simply on the facts on which the government purported to base its decision, it is clear that it should not have been proclaimed, that it was unnecessary, repressive, and ultimately damaging to the political system.

At the time the *War Measures Act* was invoked, the government had available to it the power to call out the army -- as it had already done before the *Act* was invoked. As well, it had available the following appropriate *Criminal Code* provisions: kidnapping, murder (culpable homicide while attempting to commit treason), treason, seditious conspiracy, and various weapons offences.¹⁹⁹ Douglas Schmeiser analyzed this problem and concluded that:

The ordinary criminal law adequately covers dangerous conduct by insurgents. Prosecutions of arrested persons, to be successful, must be conducted under the *Criminal Code*. The most legally-significant effect of the emergency legislation is to take away the requirement that police officers act reasonably. Do we want that kind of law in Canada? Was it necessary to have such a terrifying social upheaval to achieve this result? I leave that very limited, but very significant policy issue for each one of you to decide for

197 Among the analyses of this period are: H. Marx, "The 'Apprehended Insurrection' of October 1970 and the Judicial Function" (1972) 7 U.B.C.L. Rev. 55; R. Haggart & A. Golden, *Rumours of War* (Toronto: New Press, 1971); M. Rioux, *Quebec in Question*, trans. J. Boake, (Toronto: James, Lewis & Samuel, 1971); A. Rotstein, ed., *Power Corrupted: The October Crisis and the Repression of Quebec* (Toronto: New Press, 1971); J. Saywell *Quebec 70* (Toronto: University of Toronto Press, 1971); D. Smith *Bleeding Hearts...Bleeding Country* (Edmonton: M.C. Hurtig Ltd., 1971); K. McNaught, "Political Trials and the Canadian Political Tradition" (1974) 24 U.T.L.J. 149.

198 Gérard Pelletier took the extraordinary step of expressing his position: "...I have consistently refrained from basing my position on 'secret' information. Of course, I have had access to certain information of secondary importance that could not be divulged for security reasons. But my attitude during the crisis was always founded on facts that were available to everyone and which seemed to me - still seem to me - quite sufficient to justify this attitude." G. Pelletier, *The October Crisis* (Toronto: McClelland and Stewart, 1971) at 15.

199 H.R.S. Ryan, Unpublished Lecture (Queen's University, October, 1970).

yourself.²⁰⁰

No evidence exists that the extraordinary powers available led to the arrest of Laporte's killers or to the discovery of the Liberation cell and freeing of James Cross.

Don Jamieson, in his frank memoirs, revealed that the Prime Minister was unresponsive to the suggestion that they should be documenting for the media and public the bases for the proclamation. Jamieson attributed this to the increasing awareness, even as early as two days after the proclamation, that little such evidence was to be discovered and that many claims had been ill-founded. When the R.C.M.P. Commissioner and other senior officials gave a cabinet briefing on the Sunday night after the *War Measures Act* was invoked, the Commissioner indicated that they had uncovered no evidence to support the invocation of the *Act*. Jamieson described the cabinet as clearly shaken by this statement. The Commissioner responded by saying that the known thefts, activities of FLQ leaders, and the political climate in Quebec already provided such a justification.²⁰¹

John Turner, the Minister of Justice, outlined the reasons of the federal government, in Parliament on October 16. Walter Tarnapolsky summarized these reasons as follows:

It would seem then that the government argued, and the Members of Parliament accepted, that a state of apprehended insurrection existed because over a period of some seven years there had been a series of bombings resulting in several deaths and injuries, thefts of dynamite and ammunition, the kidnapping of two people, threatening communications, a public declaration by sixteen leading citizens out of a province of seven million urging the government to negotiate, a call for demonstrations by five radicals, a rally of several thousand people, most of whom were students, with probably some mixture of young radical workers, and a sense of fear that seemed to be growing in the populace.²⁰²

One of the most cautionary aspects of the affair is the role played by the Opposition. In the initial debate, a healthy scepticism was displayed

200 D.A. Schmeiser, "Control of Apprehended Insurrection: *Emergency Measures v. The Criminal Code*" (1970-71) 4 Man. L.J. 359 at 365.

201 D. Jamieson, *A World Unto Itself: The Political Memoirs of Don Jamieson*, Carmelita McGrath, ed., (St. John's: Breakwater, 1991) vol. 2, at 85-89.

202 W.S. Tarnapolsky, *The Canadian Bill of Rights*, 2nd ed. (Toronto: McClelland and Stewart, 1975) at 341-342.

by both the Progressive Conservative Party and the N.D.P. The Conservatives were on the brink of opposing the measure under the leadership of Robert Stanfield and the putative leadership of John Diefenbaker.

In the debate in the House on October 16, 1970, Mr. Stanfield noted that while the Prime Minister had informed him of the decision to invoke the *Act* and provided an opportunity for discussion, Mr. Stanfield was not approving the action. However, he would not say that he did not approve, because only the government was in a position to judge whether or not there was a real or apprehended insurrection and they had to bear the responsibility for the suspension of civil liberties.²⁰³ The opposition parties were acting within the constraints always imposed in a time of crisis: public opinion swinging behind "their" government against an outside attacker and subsequent polarization of the issue in those terms, their own desire both to do what was best for the country and not to obstruct genuinely needed actions, their own lack of information and their awareness that the government had access to information when it made its judgment, and a basic trust or deference among the populace making illegitimate the idea that the authorities might misuse power or make a mistake. In other words, trust in constituted authority was generalized from the institution to the office-holders so that support became axiomatic and questioning became illegitimate. This tendency in the political culture was reinforced by Trudeau's centralized style of governing and by his personalization of the dispute in his dramatic, disturbing television address.²⁰⁴ The distinction between the rule of law and the rule of individuals was blurred so that the constraints inherent in the rule of law were ineffective to control the rulers.

Thomas Berger has made the argument in this way:

Many politicians -- together with other citizens -- believe that, in a political crisis, the ordinary rules of debate must be suspended, and those who seek to take advantage of the

203 *House of Commons Debates* (16 October 1970) at 195.

204 The words alone convey only part of the experience. Part of this message was: "Let me turn now to the broader implications of the threat represented by the F.L.Q. and similar organizations. If a democratic society is to continue to exist, it must be able to root out the cancer of an armed revolutionary movement that is bent on destroying the very basis of our freedom." *War Measures Act* Proclamation, audiocassette, C.B.C., 1970.

right to criticize must be treated as if they wished to accomplish the destruction of the state. All doubts about the wisdom of government action must be vanquished if the enemies of the state are to be vanquished ... It is not, however, upon the assumption of extraordinary powers that the safety of the state depends, but upon the conviction of the people that the right to dissent is essential to the life and health of the state ... The government certainly had, and should have assured the public that it knew it had, ample power and the necessary means to capture the kidnappers. I think such actions would have demonstrated the strength of the nation and of its Constitution more surely than the abrogation of the citizen's rights.²⁰⁵

The House voted 190 to 16 to support the government's decision to invoke the *War Measures Act*, on October 19, 1970, the day after Laporte's death was made known. Although the facts have become blurred in the public memory, it is important to remember that Pierre Laporte was killed after, and not before, the imposition of the *War Measures Act*. N.D.P. leader T.C. Douglas had said "...[W]e are not prepared to use the preservation of law and order as a smokescreen to destroy the liberties and the freedom of the people of Canada. The government, I submit, is using a sledgehammer to crack a peanut."²⁰⁶ The N.D.P. voted against the measure. The Conservatives voted in favour.

On November 2, 1970, the *Public Order (Temporary Measures) Act* was introduced to replace the *War Measures Act* and *Public Order Regulations*.²⁰⁷ Robert Stanfield, Leader of the Opposition, criticized it on three grounds: its retroactivity, the absence of a provision for judicial or independent review, and the fact that people could be detained for 90 days before being brought to trial. T.C. Douglas, describing it as "arbitrary and repressive," criticized its retroactivity and the reverse onus. On second reading, the N.D.P., fearful of another public backlash directed at them, supported the measure and the

205 T. R. Berger, *Fragile Freedoms* (Toronto: Clarke, Irwin & Co. Ltd., 1981) at 210-211.

206 *House of Commons Debates* (16 October 1970) at 198. He went on to say "This is overkill on a gargantuan scale." He noted that the considerable powers under the *Criminal Code*, including seditious intent and weapons offence were available to the government, that the government had the power to call in the armed forces and did so, and that the Prime Minister could have asked Parliament for additional powers if those were not sufficient to meet the crisis. (at 197-198).

207 John Saywell has provided a succinct account of the debates and circumstances in *Quebec 70*, *supra* note 197 at 125-128.

bill passed 152 to 1, with the P.E.I. Conservative David MacDonald the lone member voting against. By the time third reading was given, opposition to the government's action was beginning to grow. Saywell has speculated that public scepticism had grown in response to Bernard Lortie's testimony about the limited capacity of the Chenier cell to carry out an insurrection. The demand of the opposition for an administrator to review and report to Parliament on the operation of the measures was denied by the government. The Prime Minister stated that appointment would indicate a lack of confidence in the Quebec government and would indicate that Ottawa was in charge,²⁰⁸ something that the people of Quebec could not have failed to notice. When the vote was taken on December 1st, thirty-one people opposed it -- the N.D.P., the Creditistes and two Conservatives. One hundred and seventy-four members of the House supported it, including Robert Stanfield.

The *Public Order Regulations, 1970*, relying on the method used in both world wars, created "unlawful associations." The F.L.Q. was declared to be an unlawful association, as was any successor group, or "any group of persons or associations that advocates the use of force or the commission of crime as a means of or as an aid in accomplishing governmental change within Canada." Seven forms of association with the organization were made indictable offences: the usual three of membership, office-holding and advocacy of its aims, plus the offence of communicating statements on its behalf (presumably a substitute for the press censorship the Prime Minister was dissuaded from imposing), contributing anything for its benefit, soliciting contributions for it, and finally, advocating, promoting or engaging in the use of force or the commission of a criminal offence as a means of accomplishing governmental change (*i.e.*, sedition). Aiding or abetting was made an offence, as was knowingly permitting a meeting of an unlawful association on one's premises.²⁰⁹ The regulations provided for detention without bail, except with the consent of the provincial Attorney-General, detention without trial for up to 90 days, arrest without warrant, detention without charge for 21 days, and seizure of property as evidence, without warrant. Once it had been established

208 *Ibid.* at 128.

209 The wording of this offence is taken from P.C. 2384, Sept. 25, 1918, *supra* note 26.

that a person had attended any meeting of an unlawful association, spoken publicly in advocacy or communicated statements on its behalf, the accused had to bear the onus of disproof.

Immediately after the *War Measures Act* was invoked, the police conducted 1,624 raids and arrested 350 people.²¹⁰ Under the regulations and the successor legislation, 465 people were arrested and two re-arrested, for a total of 467 arrested as of March 15, 1971.²¹¹ Of these, 403 were released without charge. Against the 62 remaining people, 86 charges were laid under the *War Measures Act* and 19 under the *Criminal Code*. Forty-four pleaded not guilty and either were found not guilty, or the Crown entered a *nolle prosequi* in the record.²¹² Thirteen people pleaded guilty; five pleaded not guilty and were found guilty. A total of 18 people were found guilty. It is not known how many of these people were also found guilty under the *Criminal Code*.

What is clear is that Lemieux, Vallières, Gagnon, Chartrand, and Larue-Langlois were charged with seditious conspiracy and membership in the F.L.Q.²¹³

Although the *Canadian Bill of Rights* was suspended during the life of the *War Measures Act*, there was some question as to what this meant, *i.e.*, whether the *Act* was suspended, inoperative or partly suspended temporarily. If the *Act* were temporarily suspended, then s. 5(1), which guarantees human rights or fundamental freedoms not enumerated,²¹⁴ could presumably have been enforced.

The *Public Order (Temporary Measures) Act* in November, 1970, reduced the period within which a charge had to be laid, to seven days, and provided that attendance at a number of meetings, rather than just one, was proof in the absence of evidence to the contrary, of

210 Tarnopolsky, *supra* note 202 at 346.

211 *House of Commons Debates* (7 June 1972) at 2926, Otto Lang, the Minister of Justice in reply to a question by Stan Schumacher.

212 The question did not ask for details on what happened to the forty-four who pleaded not guilty and were not found guilty.

213 Saywell, *supra* note 197 at 125. Tarnopolsky, *supra* note 202 at 347 discussed the charges and convictions of members of the Chenier cell. See *R. v. (Jacques) Rose* (1973), 12 C.C.C. (2d) 72; *R. v. (Paul) Rose* (1973), 12 C.C.C. (2d) 273.

214 This argument was made by C.L. Scott Jr. in "The *War Measures Act*, s. 6(5) and the *Canadian Bill of Rights*" (1970-71) 13 Crim. L.Q. 342.

membership in an unlawful association.²¹⁵ The definition of "unlawful association" was limited somewhat and more closely confined to the F.L.Q. Subsections (a) to (g) of section 2 of the *Canadian Bill of Rights* were to apply except to arbitrary detention or denial of bail. Finally, it provided for its own demise on April 30, 1971.

Until the *Regulations Act*²¹⁶ was passed in 1950, no requirement existed that regulations be scrutinized by Parliament. Even during the Second World War when they were examined on a yearly basis, Parliament was given no chance to debate the committee's regulations. Under the *Statutory Instruments Act*,²¹⁷ the situation was improved. Section 26 (now section 19) provided for parliamentary scrutiny. Under the current section 20, however, the Governor in Council has been empowered to make exceptions from sending the proposed regulation to the Clerk of the Privy Council, and required publication of regulations, and preclude the inspection of and obtaining copies of regulations and other statutory instruments in certain circumstances.²¹⁸ The government could also refuse, as it did in 1970, to set up an administrator to review the operation of the regulations and to report to Parliament.

In *Gagnon and Vallières v. The Queen*,²¹⁹ a *habeas corpus* application, seven grounds of appeal were advanced:

215 See Tarnapolsky, *supra* note 202 at 345-346 for an outline of the provisions.

216 S.C. 1950, c. 50.

217 *Statutory Instruments Act*, S.C. 1971, c. 38, now R.S.C. 1985, c. S-22, as am. R.S.C. 1985, c. 31 (1st Supp.), s. 94, c. 31 (4th Supp.), ss. 102 and 103, c. 51 (4th Supp.), s. 22.

218 Exemption from publication and copying may occur where the Governor in Council is satisfied that the regulation or class of regulations "could reasonably be expected to be injurious to"... "(B) the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the *Access to Information Act*, or the detection, prevention or suppression of subversive or hostile activities, as defined in that subsection. On receipt of a proposed regulation, the Clerk of the Privy Council is required to examine it for validity and form and must also ensure that "it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*." (s. 3(2)(c)).

219 (1971), 14 C.R.N.S. 321 (Que. C.A.).

1. The reasons for the proclamation should have been considered;
2. (a) the *Public Order Act* was retroactive;
- (b) the powers of the judiciary have been usurped - which was an argument based on *Liyanage v. The Queen*;²²⁰
- (c) the presumption of innocence was negated;
- (d) the *Act* removed from the Crown the burden of proof; the benefit of reasonable doubt was rendered ineffective;
- (e) it negated the principle that no accused may be called upon to testify in his own case, and
- (f) it was contrary to s. 2 of the *Canadian Bill of Rights* and the Universal Declaration of Human Rights.

The decision of Brossard J.A.²²¹ is a model of questionable judicial reasoning. He stated that the *Japanese Canadians*²²² case, *Fort Frances*²²³ and the *Chemicals Reference*²²⁴ decided the issue as to the existence of an emergency. In fact, no opportunity was given to present the "very clear evidence" that was required. Secondly, a peacetime "emergency" is distinguishable from a post-war continuation of an emergency and might have been considered to require a less onerous burden of disproof. There was not the common knowledge considered important in *Re Wartime Leasehold Regulations*.²²⁵

Brossard J.A. stated that the offence was not retroactive: the offence was to have been committed on or after October 16; the fact that actions were committed before October 16 merely raised the presumption that the person was a member on or after October 16. He concluded that even if the presumption were difficult to overcome, it

220 [1967] 1 A.C. 259 (J.C.P.C.).

221 Montgomery J.A. wrote a separate judgment. Taschereau and Turgeon, J.J.A. concurred with both Montgomery and Brossard, J.J.A. Casey, J.A. wrote a judgment not dealing directly with the constitutionality.

222 [1947] A.C. 87 (J.C.P.C.).

223 [1923] A.C. 695 (J.C.P.C.).

224 [1943] S.C.R. 1.

225 [1950] S.C.R. 124.

would not be incompatible with a not-guilty plea. He then argued that a retroactive provision was not *ultra vires*, reasoning that: there were no cases saying it was; Maxwell's *Interpretation of Statutes* indicated that a statute, if clearly retrospective, must be read that way; and where the language was clear and unequivocal, Parliament had the power under the "peace, order and good government" clause. Unfortunately, the offence of association is so elusive that this part of his judgment has some force.

He stated that the defence arguments as to the negation of the presumption of innocence, reasonable doubt, and the accused's not being required to testify in his own defence were "statements ... which cannot be supported by the jurisprudence." He pointed out that no requirement existed for the accused to testify, which was a reasonable conclusion on formal grounds. In effect though, disproof was so difficult that the accused was compelled to take the stand. He then made a statement with regard to the presumption of innocence which turns the principle on its head:

I might add that the principle dealing with the presumption of innocence, which is in fact a presumption of non-guilt in the absence of evidence permitting a contrary conclusion beyond all reasonable doubt, and that the principles relating to reasonable doubt, and to the accused not being obliged to testify in his own case, are intended to protect innocent parties, not to facilitate the acquitting of guilty parties; and in my view this was the object being sought by Parliament in the statute which the appellants have labelled unconstitutional.²²⁶

The basis on which he dismissed the *Canadian Bill of Rights* argument is difficult to fathom. His meaning seems to be that since the Act was constitutional, on the grounds he had already outlined, then the *Bill of Rights* and *Drybones*²²⁷ were not applicable. Since section 2(a) to (g) includes the presumption of innocence and the right to a fair hearing in accordance with the fundamental principles of justice, he might have been saying that he had found no actual infringement. If he meant they were inapplicable once constitutionality was established, this conclusion leaves the sections without applicability.

The defence argued that the power of the judiciary was usurped,

226 *Supra* note 219 at 353.

227 *R. v. Drybones*, [1970] S.C.R. 282.

basing this argument on the decision of the Judicial Committee of the Privy Council in *Liyanage v. The Queen*.²²⁸ In that case, the Ceylonese government was found to have had a legislative plan to secure conviction of certain individuals and to have interfered with judicial sentencing discretion, requiring that they be given certain sentences.

Noel Lyon made this compelling argument in a 1970 article based on the brief he presented in the *Gagnon and Vallières* case. It was his view that applying *Liyanage* to the *Public Order Regulations* should lead to a declaration that the *Regulations* were *ultra vires*. The constitutional provisions, though not identical, were similar in the two cases. The regulation, later adopted by Parliament, declaring the F.L.Q. to be an unlawful association (section 3) and, second, declaring persons who were members or associated in other ways to be guilty of an offence (section 4), amounted to a judgment of seditious conspiracy against the organization and those party to it. In Lyon's opinion, "the judiciary was reduced to the role of timekeeper, keeping track of who attended what meetings and spoke or communicated what statements on behalf of an association. Criminal guilt was determined by executive decree."²²⁹

Further, he argued, judicial decisions have indicated that an emergency creates a need for wider executive powers and enlarges the possible scope of Parliament's legislative power. "But it does not follow that judicial powers are curtailed. Indeed, it is in times of crisis when judicial checks on excesses and abuses of power become most important, for the temptations to excess and abuse are greatly increased among officials who are pressed by an anxious public to deal with the crisis."²³⁰ This argument was not successful. The separation of powers between branches of government has also been brought into question through the operation of the *War Measures Act*.

Brossard J.A. appears to have said that the argument advanced on the basis of *Liyanage* is utopian, failing to take into account the purposes the government was attempting to achieve (as reflected in the preamble), the danger which it was attempting to counter, and the

228 *Supra* note 220. See N. Lyon, "Constitutional Validity of Sections 3 and 4 of the *Public Order Regulations*, 1970" (1972) 18 McGill L.J. 136.

229 *Ibid.* at 140.

230 *Ibid.* at 144.

desire of the government to protect civil liberties. These considerations would appear to be irrelevant to the separation of powers question.

Montgomery J.A. distinguished *Liyanage* on three grounds. First, the Ceylonese offence was *ad hominem*, whereas here the offence was directed at an association. It is submitted that this should not matter in that the aim and effect on the judiciary were the same. Second, the Ceylonese legislation had a punitive and vindictive character. He doubted whether the Privy Council would have found the legislation invalid had it not been for the provision requiring the courts to impose minimum sentences and confiscate property. The former is a distinguishable feature of the cases. However, the fact that the function of determining sentence was not usurped is less important than the fact that the determination of guilt was usurped. Third, the crime created is akin to seditious conspiracy but less serious; under section 62, the maximum penalty was 14 years, under the *Act*, the maximum was five years. However, the maximum punishment allowable under the *War Measures Act* is five years, so this is no indication of the nature of the offence. The judicial arguments against the *Liyanage* case are unconvincing.

Judicial review of the proclamation of the *Act* is unlikely to be forthcoming unless the "very clear evidence" test in *Fort Frances* is met. The opportunity of presenting such evidence was denied in *Gagnon and Vallières v. The Queen*. The Supreme Court has considered common knowledge of the emergency to be relevant in *Re Wartime Leasehold Regulations*.²³¹ The most recent case, the *Anti-Inflation Act Reference*²³² is significant for its admission of extraneous evidence going to the lack of an emergency and for its consideration of the bases on which the government *could* have made its decision, bases which gave heavy emphasis to the Consumer Price Index. It is important to note that the court, in deciding that the emergency did exist, was not just relying on lack of clear evidence to the contrary but was actively searching for a rational basis on which the government could have decided that there was an emergency. The circumstances of

231 [1950] S.C.R. 124.

232 *Reference re the Validity of the Anti-Inflation Act*, [1976] 2 S.C.R. 373. More recently in the *Crown Zellerbach* case, the Supreme Court, in divided judgments, has analyzed the scope of "peace, order and good government", under the national concern test: *R. v. Crown Zellerbach Canada Limited*, [1988] 1 S.C.R. 401.

the case were such that the government had not explicitly based the legislation on an emergency; the emergency declaration came from the government's lawyers. It is of limited utility however; the slight amount of evidence considered sufficient in the *Anti-Inflation Act* case and the lack of heed paid to Professor Lipsey's brief indicates that almost any evidence supporting the government's position would be an acceptable basis. The courts remained deferential to Parliament through this period of Canadian legal history.

Conclusion

A.R.M. Lower has said,

... The Canadian War Measures Act was the most complete surrender of parliamentary power made in any English-speaking country (except Newfoundland) since Henry VIII in 1540 persuaded parliament for a brief period to legislate by proclamation. The result was that both during the first German War and the second, Canada had, not parliamentary government, but 'Order in Council' government ... It was to do grave injury to the structure of Canadian democracy.²³³

As Theodore Plucknett has written, even that aberrant British provision contained safeguards against oppressive use of emergency power:

However, the Statute of Proclamations provided that in cases of emergency the King and Council may issue proclamations which shall have the force of an act of Parliament. The second section of the statute contains carefully drawn safeguards to prevent proclamations being used in an oppressive manner; the principles of the common law, existing acts of Parliament, and property rights were put beyond the reach of proclamations.²³⁴

Although we need emergency legislation in times of national crisis, liberal democracy requires that we guard against its potential abuse. Too much trust in leaders, and not enough trust by leaders in people and Parliament has led to these fundamental abuses.

The story of the *War Measures Act* is one of over-broad legal provisions, an inattentive and fettered press, an Opposition keyed to the

233 A.R.M. Lower, *Colony to Nation* (Toronto: Longmans, Green, 1946) at 469-470.

234 T. Plucknett, *A Concise History of the Common Law*, 4th ed. (London: Butterworths, 1948) at 45.

emergent need rather than to civil liberties, and a judiciary sometimes admirably alert to the need to protect liberty in a democratic state, but more consistently subservient to the wishes of cabinet and the legislature.

This is **EXHIBIT “Z”**

to the Affidavit of

MADELEINE ROSS

sworn before me by video conference

this 22nd day of February, 2022.



Janani Shanmuganathan



Court File No. CV-22-88569

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued: 02/15/2022

Délivré par voie électronique

Ottawa

THE HONOURABLE ASSOCIATE CHIEF
JUSTICE FAYE MCWATT

)

MONDAY, THE 14TH

)

)

DAY OF FEBRUARY, 2022

B E T W E E N:

CITY OF OTTAWA

Applicant

– and –

PERSONS UNKNOWN

Respondents

– and –

ATTORNEY GENERAL OF ONTARIO and
ATTORNEY GENERAL OF CANADA

Intervenors

ORDER

THIS APPLICATION, made by the City of Ottawa was heard this day at the Court House,
161 Elgin Street, Ottawa, Ontario.

ON HEARING the submissions of the applicant, and reading the materials filed, and having
regard to the urgency of the situation,

1. **THIS COURT ORDERS** that an interlocutory injunction is granted, pursuant to section 440 of the *Municipal Act*,

2. **THIS COURT ORDERS** that any persons having notice of this Order are hereby restrained and enjoined from directly or indirectly, by any means whatsoever:

a. Breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266, in particular:

i. With respect to Open Air Fire By-law 2004-163:

1. They shall not set or maintain an open air fire without first having obtained the necessary permit from the Fire Chief;

ii. With respect to Fireworks By-law 2003-237:

1. They shall not discharge any firecrackers or any fireworks.

iii. With respect to Noise By-law 2017-255:

1. They shall not cause any noise likely to disturb the inhabitants of the City, including but not limited to, causing noise by honking air horns, car horns, train horns, in real-time or playing pre-recorded horns

iv. With respect to Use and Care of Roads By-law 2003-498:

1. They shall not encumber or damage a highway by any means, including but not limited to, encumbering or damaging the highway with tents, structures, or appliances;

2. They shall not set or carry fire on a highway; and

3. They shall not throw, pile, store or cause any material to be thrown or piled upon a highway except for the purpose of having it immediately delivered upon adjacent premises.

v. Idling Control By-law 2007-266 and in particular:

1. They shall not cause or permit a vehicle to idle for more than three (3) consecutive minutes in a sixty (60) minute period, unless:
 - a. it is an occupied vehicle, within the demonstration zone as described in Appendix A to this order, and the temperature outside is less than negative fifteen (15) degrees Celsius including the windchill value as determined by the Environment Canada temperature readings; or
 - b. it is an occupied vehicle, outside the demonstration zone as described in Appendix A to this order, and the temperature outside the vehicle is less than five degrees Celsius including the windchill value as determined by the Environment Canada temperature readings.
 - b. physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to impede, restrict or in any way physically interfere with, another person's compliance with this order;
 - c. threatening, harassing or intimidating the applicant's employees, servants, agents or other persons engaged in the administration or enforcement of municipal by-laws; and
 - d. physically interfering with or counselling others to physically interfere with the performance by the applicant of its obligations under the *Municipal Act, 2001* and its contractual relationships with its employees, servants, agents or other persons having business with the applicant.
3. **THIS COURT ORDERS** that the respondents and each of them, and any and all persons having knowledge of this Order, forthwith remedy any contraventions of the By-laws as set out in subsection 2(a) of this Order, and;
4. **THIS COURT ORDERS** that this order be directed to the Sheriff of the County of Ottawa for enforcement and directs the Ottawa Police Service, and any Police Service assisting the Ottawa Police Service, to assist the Sheriff in the enforcement of the order by removing from the subject property any person contravening its provisions, and/or removing any objects being used in

contravention of bylaws, subject to the discretion of the police, and any Police Service assisting the Ottawa Police Service, with respect to the timing and means of enforcement.

5. **THIS COURT ORDERS** that the terms of this Order shall remain in force until varied or discharged by a further Order of the Court.

6. **THIS COURT ORDERS** that, provided the terms of this Order are complied with, the Respondents and other persons remain at liberty to engage in a peaceful, lawful and safe protest.

7. **THIS ORDER** shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

8. **NOTICE OF THIS ORDER** may be given by: posting copies of this Order in or around downtown Ottawa; reading the Order to any person, including but not limited to reading the Order over an amplification system, and publishing this Order online.

9. **THIS COURT ORDERS** that the terms of this Order bind the respondents and every other person or legal entity who is subject to this Order and is given notice of the Order, as of the time such respondents, person or legal entity first receives notice of the Order, and whether or not such respondents, person or legal entity has been served with a copy of the Order.



McWatt A.C.J.S.C.J.

"Electronically Issued; February 15, 2022"

Appendix “A”

Appendix is a map the is included at section 3(ia) of the Idling Control By-law 2007-266.



THE CITY OF OTTAWA
Applicant

-and-

PERSONS UNKNOWN
Respondents

Court File No. CV-22-88569

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

ORDER

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